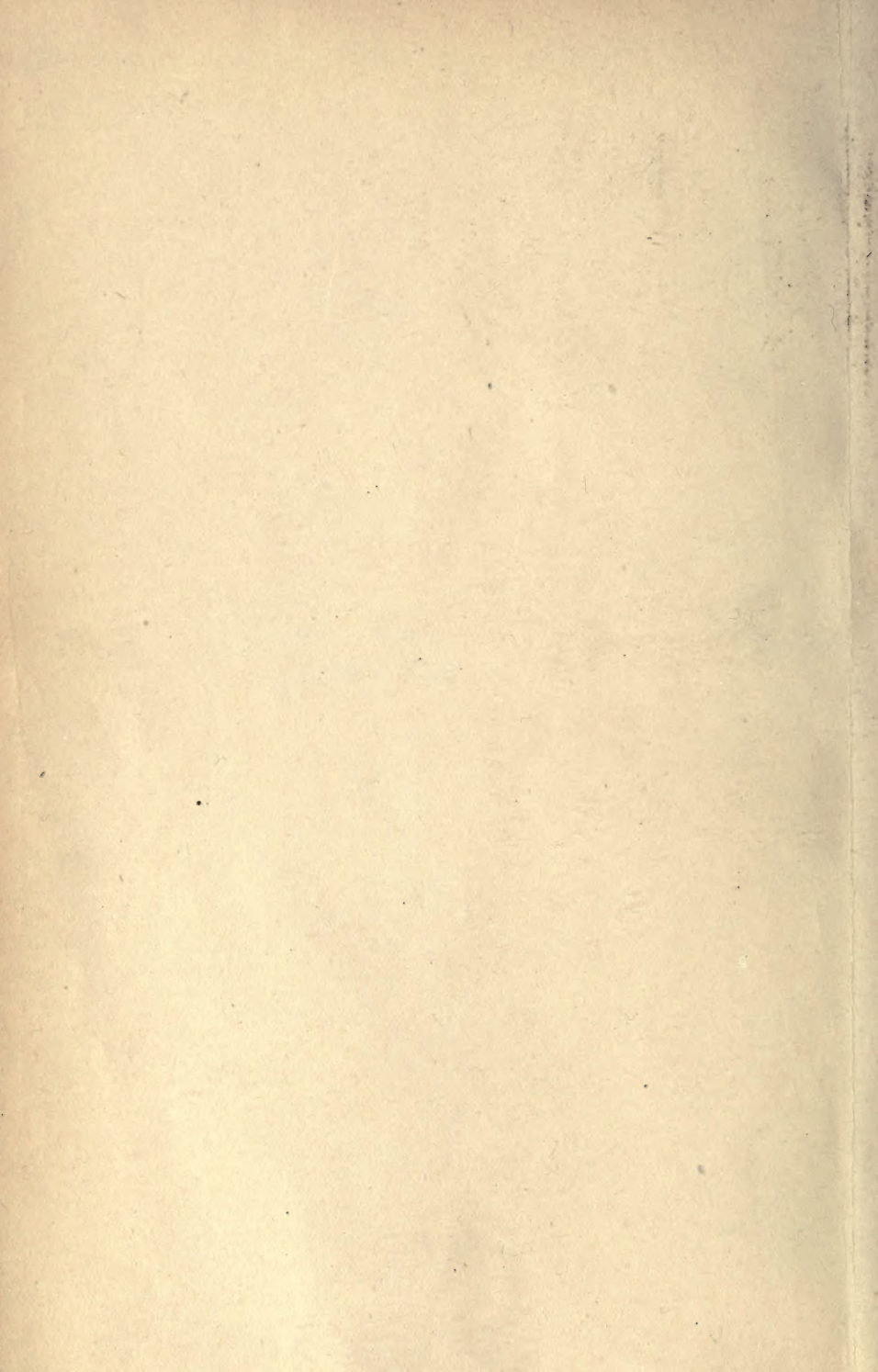





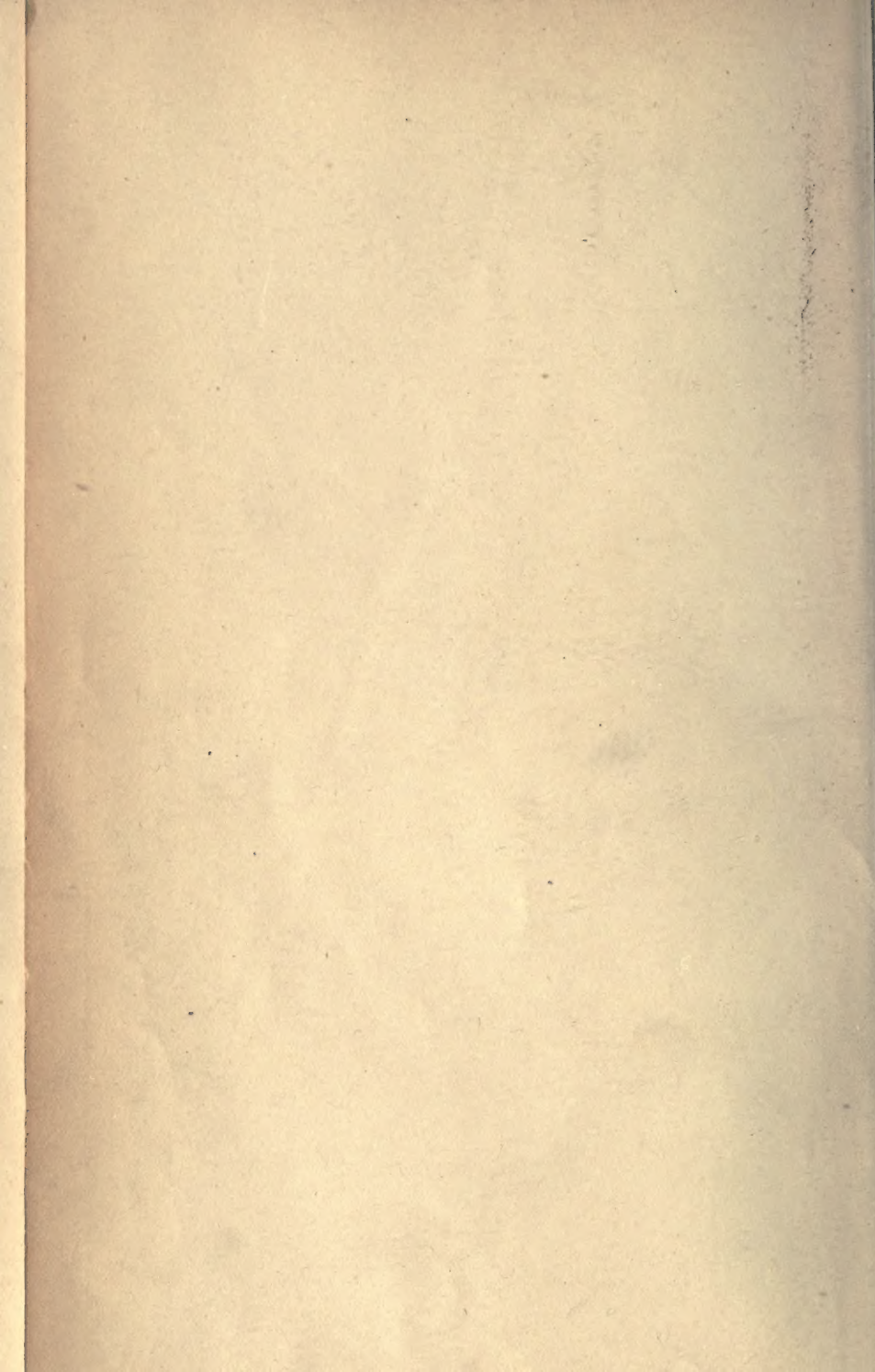
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FORMS AND PRECEDENTS

OF PROCEEDINGS IN

The Supreme Court of Judicature

FOR ONTARIO

AND

The Supreme Court of Canada

AND OTHER FORMS OF GENERAL UTILITY IN THE
PRACTICE OF SOLICITORS

BY

GEORGE SMITH HOLMESTED

One of His Majesty's Counsel, Senior Registrar of the High Court of Justice

AND

THOMAS LANGTON

One of His Majesty's Counsel

EDITORS OF THE ONTARIO JUDICATURE ACT

TORONTO :

THE CARSWELL COMPANY, LIMITED

1904.

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Entered according to the Act of the Parliament of Canada, in the year of our
Lord one thousand nine hundred and four, by GEORGE SMITH HOLMESTED
and THOMAS LANGTON, in the office of the Minister of Agriculture.

PRINTED BY
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CON. RULE FORMS.	H. AND L.	CON. RULE FORMS.	H. AND L.	CON. RULE FORMS.	H. AND L.	CON. RULE FORMS.	H. AND L.	CON. RULE FORMS.	H. AND L.
1	35	44	392	87	996	129	1240	171	1069
2	36	45	106	88	694	130	1241	172	1070
3	37	46	112	89	695	131	1242	173	1071
4	38	47	113	90	696	132	1243	174	1081
5	39-47	48	124	91	697	133	1226	175	1082
6	50	49	478	92	706	134	1228	176	1083
7	51	50	479	93	708	135	1183	177	1108
8	53	51	486	94	739	136	1281	178	1087
9	54-64	52	397	95	1606	137	1280	179	1088
10	123	53	398	96	503	138	1279	180	1089
11	125	54	559	97	485	139	802	181	1090
12	126	55	560	98	11	140	803	182	1097
13	127	56	561	99	1626	141	804	183	1084
14	128	57	400	100	1627	142	805	184	1085
15	579	58	403	101	1629	143	806	185	1113
16	744	59	1327	102	910	144	807	186	1576
17	70	60	1527	103	908	145	808	187	1577
18	115	61	528	104	902	146	810	188	1578
19	504	62	686	105	906	147	811	189	1579
20	505	63	687	106	68	148	816	190	1580
21	949	64	784	107	75	149	817	191	1423
22	1010	65	789	108	85	150	818	192	1426
23	1128	66	790	109	421	151	819	193	1427
24	1232	67	580	110	422	152	820	194	1428
25	376	68	1155	111	423	153	865	195	1429
26	377	69	1162	112	467	154	864	196	1227
27	105	70	1325	113	104	155	875	197	1161
28	111	71	1080	114	460	156	838	198	1178
29	480	72	1233	115	461	157	839	199	1184
30	378	73	1234	116	907	158	887	200	1186
31	379	74	929	117	578	159	424	201	1187
32	380	75	931	118	542	160	822	202	1188
33	381	76	984	119	456	161	823	203	1189
34	382	77	985	120	737	162	824	204	1190
35	383	78	986	121	903	163	825	205	1191
36	334	79	936	122	904	164	821	206	1623
37	385	80	948	123	905	165	834	207	795
38	386	81	953	124	725	166	1064	208	793
39	387	82	954	125	1129	167	1065	209	794
40	388	83	956	126	1130	168	1066	210	900
41	389	84	1042	127	1131	169	1067	211	901
42	390	85	1005	128	1239	170	1068	212	541
43	391	86	1013						

FORMS AND PRECEDENTS.

CHAPTER I.

SOLICITORS.

SECTION I.—AUTHORITY TO PROSECUTE OR DEFEND—CONSENT TO ACT AS RELATOR, NEXT FRIEND, OR GUARDIAN AD LITEM.

I, A. B., of (*Residence and addition*), authorize Mr. C. D., of (*Place of business*), to commence and prosecute an action [*Or, such proceedings as may be necessary and proper*] on my behalf, in the High Court of Justice, for [*State, succinctly, the object; as thus: the administration of the estate of E. F., deceased*]. Dated this — day of —, 19—.

Witness.

A. B.

1

Authority by an adult, to prosecute an action or proceeding.

In the High Court of Justice.

(*Short title.*) (*a*)

I, (the defendant) A. B., of (*Residence and addition*), authorize Mr. C. D., of (*Place of business*), to appear to, and defend this action on my behalf.

[*Or, to appear and act on my behalf on the hearing of the petition presented by E.F. in this matter—or as may be.*]

Dated, &c.

Witness.

A. B.

2

Authority by an adult, to defend an action or proceeding.

(a) See Form No. 26.

3

Authority by In the High Court of Justice.
a relator to
use his name.

In the matter of an intended action in the nature of an information.

Between (*See Nos. 28, 29*).

I, A. B., of (*Residence and addition*), authorize Mr. C. D., of (*Place of business*), to use my name as relator in the (within) writ about to be issued in the High Court of Justice, for the purpose of (*State, succinctly, what*); and to prosecute the action to be commenced thereby. Dated, &c.

Witness.

A. B.

(*Court and Short title as in No. 2.*)

4

The like, in
the place of a
deceased
relator.

I, A. B., of (*Residence and addition*), authorize Mr. C. D., of (*Place of business*), to use my name in this action, as relator therein in the place of E. F., deceased; and to continue the prosecution of this action.

Dated, &c.

Witness.

A. B.

5

Authority by
the next
friend of a per-
son under dis-
ability, to
prosecute an
action or pro-
ceeding. (a)

I, A. B., of (*Residence and addition*), authorize Mr. C. D., of (*Place of business*), to commence and prosecute an action in [*Or, to make an application to*] the High Court of Justice, on behalf of E. F., an infant [*Or, a person of unsound mind, not so found, &c.*], for [*State, succinctly, the object; as thus: the administration of the estate of B. C., deceased—Or, for the appointment of a guardian of the person and estate of the said E. F., and an allowance for his maintenance*]; and to use my name in such action [*Or, proceeding*] as the next friend of the said E. F.

Dated, &c.

Witness.

A. B.

(*Court and style of cause as in No. 2.*)

6

Authority by
new next
friend, to use
his name, and
continue pro-
ceedings. (a)

I, A. B., of (*Residence and addition*), consent to be appointed, and to act as, the next friend of the plaintiff [*Or,*

(a) The written authority must be filed in the office in which the cause or matter is commenced: Rule, 198.

applicant], C. D., in this action [*Or*, matter], in the place of E. F. And I authorize Mr. G. H., of (*Place of business*), to use my name as such next friend, and to continue the prosecution of this action [*Or*, matter.]

Dated, &c.

Witness.

A. B.

—
The mark

+

of A. B.

This paper writing was read over by me to the above named A. B.; and he appeared perfectly to understand the same, and made his mark thereto in my presence:

7
Attestation to
retainer or
consent by a
marksman.

X. Y., of (*Residence and addition*.)

—
SECTION II.—CHANGE OF SOLICITOR.

(*Court and style of cause as in No. 2.*)

Required on behalf of the [plaintiff *Or*, defendant, *Or*, defendant C. D.,] an order appointing Mr. Y. Z. his solicitor in this cause, in the place and stead of Mr. D. H., his present solicitor.

8
Præcipe for
order chang-
ing solicitor.

Dated, &c.

Y. Z.

Solicitor for (*Applicant*.)

To the [Clerk of the Crown and Pleas, *Or*, Clerk of Records and Writs. *Or* (Deputy-clerk of the Crown or Deputy, (*or* Local) Registrar] at

To be indorsed with address of solicitor filing same. See No. 10.

—
(*Court and style of cause as in No. 2.*)

Required an order enabling the [plaintiff, *Or*, defendant C. D.] to prosecute [*Or*, defend] this cause [*Or*, matter] in person, instead of by Mr. A. B., his solicitor.

9
Præcipe for
order to act in
person, instead
of by a solicitor
and agent.

Dated, &c.

C. D.

10

Indorsement
on præcipe.

This præcipe is filed by the plaintiff [*Or*, defendant C. D.] of (*giving address in person; where necessary, add:*) and his address for service is at (*giving address: see Con. Rule 136.*)

Praecipe Order to change Solicitor. (Rule 335.)

11

Præcipe order
changing
solicitor. (a)

In the High Court of Justice.
the day of A.D. 19 .

Between Plaintiff,
and Defendant.

Upon the application of

It is ordered that he be at liberty to change his Solicitor in this cause by making his Solicitor in the place and stead of his present Solicitor.

(*Signature.*)

(*Court and style of cause as in No. 2.*)

12

Notice of
appointment
of a new solicitor in place of one deceased.

Please enter my name as solicitor for — in the place of C. D., deceased.

Dated, &c.

Yours, &c.,
E. F.,

To the Clerk of Records and Writs (*or other proper officer*).

(*Short title.*)

13

Notice of
appointment
of a solicitor,
instead of one
deceased—or
instead of
client acting
in person.

Take notice, that I am now concerned as solicitor in this cause [*Or*, matter] for the plaintiff (*or as may be*), [in the place and stead of Mr. C. D., now deceased *Or*, instead of his acting in person.]

Dated this — day of —, 19—.

E. F., of (*Place of business.*)

To the Clerk of Records and Writs (*Or*, other proper officer) and to Mr. G. H., the solicitor [*Or*, agent] for the defendant (*or as may be*).

SECTION III.—STRIKING OFF THE ROLL.

14

Petition by a
solicitor to be
struck off the
roll.

In the High Court of Justice.

In the matter of A. B., a solicitor of the Supreme
Court of Judicature for Ontario.

To the Honourable the Judges of the High Court of Justice.
The humble petition of the above named A. B., of
(*Place of business*).

Sheweth as follows:

1. In the month of 19—, the petitioner was duly admitted a solicitor of the Supreme Court of Judicature for Ontario; [*or an attorney-at-law of the former Courts of Common Law, and a solicitor of the former Court of Chancery of the Province of Upper Canada (or Ontario), and is now a solicitor of the Supreme Court of Judicature for Ontario*],

2. The petitioner is now desirous to have his name struck off the roll of solicitors of the said Court.

The petitioner therefore humbly prays, that he may be struck off the roll of solicitors of the Supreme Court of Judicature for Ontario.

And your petitioner will ever pray, &c.

15

Affidavit in
support of
motion or
petition.

In the High Court of Justice.

In the matter of A. B., a solicitor of the Supreme
Court of Judicature for Ontario.

I, the above named A. B., of (*Place of business*), gentleman, make oath, and say as follows:

1. In the month of , 19—, I was duly admitted a solicitor of the Supreme Court of Judicature for Ontario (*or as the case may be, see par. 1 of the preceding form*).

2. I am now desirous of having my name struck off the roll of solicitors of said Court.

3. No application or other proceeding is now pending in this Honourable Court, or elsewhere, against me as such solicitor as aforesaid; and I do not expect or apprehend that any application or proceeding will be made or taken against me as such solicitor as aforesaid.

(*Formal parts: see No. 14.*)

16

Petition to
strike a solicitor
off the roll
for non-pay-
ment of
money. (a)

1. In the month of _____, 19____, the above named A. B. was duly admitted a solicitor of the Supreme Court of Judicature for Ontario (*or as the case may be, see par. 1 of No. 14*), and he is now on the roll of the solicitors thereof.

2. The said A. B. was employed by the petitioner as his solicitor [*shew for what purpose, e.g., to collect the amount due to the petitioner upon a certain mortgage made by one C. D.*]

3. The said A. B. accordingly took proceedings and recovered the amount due upon such mortgage, amounting to the sum of \$——.

4. On the —— day of ——, the petitioner procured an order of this Honourable Court in the usual terms, for the delivery of the said A. B.'s bill of costs against the petitioner, and for the taxation of the same, and for the payment by the said A. B. of any balance which might appear to be due from him to the petitioner.

5. The said A. B., pursuant to the said order, delivered to the petitioner his bill of costs, and the same has been duly taxed by Mr. _____ one of the taxing officers of the Supreme Court who has certified that there is a balance of \$—— due to the petitioner from the said A. B. in respect of the amount so recovered from the said C. D. by the said A. B. for the petitioner, after deducting the said A. B.'s costs, and all other sums with which the said A. B. is entitled to charge the petitioner.

6. The said taxing officer's certificate of the amount due to the petitioner as aforesaid, has been duly served upon the said A. B., and the petitioner has demanded payment of the said amount, but the said A. B., without any just cause, wholly neglects and refuses to pay the same to the petitioner, although the time limited by the said order for payment of the said sum has elapsed.

1. The petitioner therefore humbly prays, that the said A. B. may be struck off the roll of solicitors of the Supreme Court of Judicature for Ontario, and may be ordered to pay to your petitioner his costs of this matter.

2. Or that such other order may be made in the premises as to this Honourable Court shall seem just. And the petitioner will ever pray, &c.

CHAPTER II.

PROCEEDINGS PRELIMINARY TO AN ACTION.

SECTION I.—PROCEEDINGS PRELIMINARY TO AN ACTION IN THE NATURE OF AN INFORMATION.

I hereby certify that the writ and statement of claim in this action are proper for the sanction of His Majesty's Attorney-General.

Dated this _____ day of _____, 19—.

(*Counsel's signature.*)

17

Counsel's Certificate of information being proper for fiat of the Attorney-General.

(*Style of cause: see No. 26.*)

I hereby consent that my name be used as relator in the above proposed action.

(*Relator's signature.*)

18

Relator's consent to his name being used.

I hereby certify that A. B. of _____ is a fit and proper person to act as relator in the action proposed to be commenced in the name of His Majesty's Attorney-General for Ontario, at the instance of the said A. B. for the purpose (*stating the purpose*), and that the said A. B. is competent to answer the costs of the said proposed action.

Dated, &c.

(*Signature.*)

Solicitor for A. B.

19

Solicitor's certificate of fitness of proposed relator.

SECTION II.—NOTICE OF ACTION.

To A. B. of (*Address and addition*) and C. D. of (*Address and addition*).

20

Notice of action.

I, E. F., [*Or, I, G. H., of (Address) as solicitor (Or agent) for and on behalf of E. F.] of (Address and addition)* do hereby, according to the form of the statute in such case made and provided, give you notice that at or after the expiration of *one (a)* calendar month from the time this notice being delivered to you or left for you at your usual place of abode,

(a) See R. S. O. 1897 c. 88, s. 14, requiring notice of action before commencing an action against a Justice of the Peace. Under that Act both the day of delivering of a notice and the day of issuing the writ must be excluded in computing the calendar month. See *Young v. Higgins*, 9 M. & W. 42.

I [*Or, the said E. F.*] will commence an action in the High Court of Justice for Ontario (*or as may be the case*) against you at my suit [*Or, at the suit of the said E. F.*] and proceed thereon according to law to recover damages from you, for that [*here state the cause of action with clearness and certainty, &c., so as to inform the person served of the ground of complaint, e.g., for that you being and acting as one of His Majesty's Justices of the Peace, in and for the County of did on or about the day of maliciously and without any reasonable or probable cause, cause me [*Or, the said E. F.*] to be arrested and imprisoned in the common gaol of the said County of] to the damage of me [*Or, the said E. F.*] in the sum of \$10,000 which I claim.*

Dated this day of A.D. 19 .

Yours, &c.,

E. F.,

[*Or G. H., solicitor for the said E. F.*]

21

Indorsement
on notice of
action against
a Justice of
the Peace. (a)

This notice is given by E. F. of No. street in the City of (*as the case may be*) in the County of and Province of Ontario (*Or, where the notice is given by a solicitor or agent. This notice is given by G. H. of No. street in the City of (*as case may be*) in the County of and Province of Ontario, solicitor (*Or agent*) for the within named E. F. of No. street in the City of (*as the case may be*) in the County of and Province of Ontario.*

22

Notice of
accident. (b)

To Mayor (*or as the case may be*) of the City of (*or as the case may be*).

Take notice that on day the day of 19 , X. Y. of met with an accident and thereby sustained personal injury on street (*Or, as the case may be*) in the municipality of and that such accident was caused by the [*defective state of the sidewalk*] on the [*north side of*] said street, in that the same (*setting out the particulars as the case may be*).

Dated, &c.

Yours, &c.,
(*Signature*)

Solicitor for X. Y.

(a) This indorsement is required by R. S. O. 1897 c. 88, s. 14.

(b) See R. S. O. 1897 c. 223, s. 606 (3).

23

Notice to employer of accident to workman. (c)

To A. B. of , (*here insert employer's address*).
Or

To the company (*Or as the case may be*).

Take notice that on the day of 19 , C. D. of (*insert address of injured person*), a workman in your employment, sustained personal injury (*add of which he died if such be the case*) and that such injury was caused by (*state shortly the cause of the injury, e.g., the fall of a beam Or an unguarded band, (Or as the case may be)*).

Dated, &c.

Yours, &c.,
(*Signature*)
Solicitor for

SECTION III.—STYLE OF CAUSE (*d*).

24

Full style of cause.

In the High Court of Justice.

Between John Jones and William Brown,
and Plaintiffs,
James Smith, and the Attorney-General for Ontario,
Defendants.

25

Shortened style of cause. (*d*)

Between John Jones and another [*Or, others*] Plaintiffs,
and
James Smith and another [*Or, others*] Defendants.

26

Short style of cause. (*d*)

Jones v. Smith.
or
Atty.-Gen. v. Smith.

27

Action by Attorney-General without a relator and a plaintiff.

The Attorney-General for the (Province of Ontario or Dominion of Canada) and C. D. Plaintiffs,

Or,

28

With a relator

The Attorney-General for the (Province of Ontario or Dominion of Canada) upon the relation of C. D. Plaintiff.

29

Where relator
is joined as
plaintiff.

Or,

(*As above to C. D.*) and the said C. D. Plaintiffs,

Where the plaintiff sues on behalf of himself and others, or is under disability, that fact should be stated in the title of the action, thus:—

30

Class action

Between John Lee, on behalf of himself and all other the
creditors of A.B., deceased, Plaintiff.

Or,

Between—G. F. and J. G., the elder, G. N., and R. M., who
sue on behalf of themselves and all other ratepayers
of the Township of Turnberry, except the defendant,
J. M., Plaintiffs,

and

The Wellington, Grey and Bruce Railway Company,
the Corporation of the Township of Turnberry, W.
McG., and J.M., Defendants.

31

Next friend.

Or,

John Lee, an infant, by C. D., his next friend,
 Plaintiff.

Or,

Jane Lee, wife of the defendant John Lee, by C.D.,
her next friend, Plaintiff.

Or,

John Lee, a person of unsound mind, not so found,
by C. D., his next friend, Plaintiff.

32

Committee.

Or,

John Lee, a person of unsound mind, by C.D., the
committee of his estate, and the said C. D., Plaintiffs.

33

Qui tam ac-
tion.

Or,

A. B. who sues as well for himself as on behalf of
His Majesty, Plaintiff.

34

Partnership
firms.

Between John Bull & Co.,

Plaintiffs,

and

Dombey & Son,

Defendants.

CHAPTER III.

COMMENCEMENT OF ACTIONS.

SECTION I.—FORMS OF WRITS OF SUMMONS, AND NOTICE IN LIEU THEREOF.

General Form of Writ of Summons. (Rule 127.)

In the High Court of Justice.

Between A.B.,

Plaintiff,

and

C.D. and E.F., Defendants.

Name and title of Sovereign, e.g., Edward the Seventh, by the Grace of God, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India (*b*).

To C.D. of in the County of and E.F. of

We command you, that within ten days after the service of this writ on you, inclusive of the day of such service, you cause an appearance to be entered for you in an action at the suit of A.B.; and take notice that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence on the plaintiff's own shewing, and you may be deemed to have admitted the plaintiff's claim and (subject to Rules of Court) will not be entitled to notice of any further proceedings herein.

Witness, the Honourable President of our High Court of Justice at in the year of Our Lord 19 .

Memorandum to be subscribed on the writ.

N.B.—This writ is to be served within 12 calendar months from the date thereof, or if renewed, within 12 calendar months from the date of such renewal, including the day of such date, and not afterwards.

The defendant [*Or*, defendants] may appear hereto by entering an appearance [*Or*, appearances] either personally or by solicitor at the [] office at

(a) Con. Rules 1897, Form 1.

(b) See Ont. Gazette, 1902, p. 6.

To be inserted in the margin.

Issued from the Central Office, Toronto, (*Or*, from the office of the Deputy Clerk of the Crown, *or* Deputy *or* Local Registrar of the High Court of Justice, in the County of).

(Signature of officer).

Indorsements to be made on the writ.

The plaintiff's claim is for, &c. (*as in Form No. 38, or as may be*).

Where the writ is to be specially indorsed add, The following are the particulars:—(giving them. See Nos. 39 to 49. Also add the Indorsement No. 50).

This writ was issued by *E.F.*, of solicitor for the said plaintiff, who resides at (*a*) [*Or*, this writ was issued by the plaintiff in person who resides at], [*mention the city, town or township, and also the name of the street and number of the house of the plaintiff's residence, if any, or in case of a township the number of the lot and concession*].

Indorsement to be made on the writ after service thereof.

The writ was served by *X.Y.* on *C.D.* [the defendant *or* one of the defendants], on , the day of , 19 .

(Signed) *X. Y.*

Con. Rules, 1888, Form 1.

Writ for service out of Ontario. (Rule 128).

36

Writ for service out of Ontario. (*b*)

In the High Court of Justice.

Between *A.B.*,

Plaintiff,

and

C.D. and *E.F.*, Defendants.

Edward the Seventh, by the Grace of God, &c. (*as in No. 35*).

To *C.D.*, of

We command you, *C.D.*, that within [*here insert the number of days directed by the order allowing service*] after the

(*a*) Where the writ was issued in the name of two plaintiffs, and in the indorsement it was stated that they resided "at the Township of Brant in the County of Bruce, and in the State of Wisconsin in the U. S. A.," an order for security for costs was held to be properly grantable on *præcipe*, and a motion to set it aside was refused, though it appeared that one of the plaintiffs lived within the jurisdiction: *McConnell v. Wakeford*, 13 P. R. 455; *sed vide, Anderson v. Quebec Fire Ins. Co.*, 15 P. R. 132.

(*b*) Con. Rules 1897, Form 2.

service, on you, of this writ [*Or, notice of this writ as the case may be*], and of the plaintiff's statement of claim delivered herewith, inclusive of the day of such service, you cause an appearance to be entered for you in an action at the suit of *A.B.*, and your defence thereto, if any, to be delivered; and take notice that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence on the plaintiff's own shewing, and you may be deemed to have admitted the plaintiff's claim and (subject to Rules of Court) will not be entitled to notice of any further proceedings herein.

Witness, the Honourable

President, &c.

Memorandum and indorsements as in Form 35.

Indorsements to be made on the writ.

N.B.—This writ is to be used where the defendant or all the defendants, or one or more defendant or defendants, is or are out of Ontario. When the defendant to be served is not a British subject, and is not in British dominions, notice of the writ, and not the writ itself, is to be served upon him (c).

Indorsement to be made on the writ after service thereof:

This notice was served by *X.Y.*, on *G.H.*, (the defendant or one of the defendants) on the day of 19 .

Indorsed the day of 19 .

(Signed)

(Address)

Con. Rules, 1888, Form 2.

(c) This N.B. is to be indorsed on the writ, if amended by adding a defendant who is to be served out of Ontario: *Keate v. Phillips*, W N. 1878, 186. It need not be indorsed when intended to be served personally within Ontario, though the defendants are resident abroad: see *Pollerfen v. Sibson*, 16 Q. B. D. 792; but if the writ is to be served substitutionally within Ontario in the case of a defendant resident abroad the same form of writ must be used as would be necessary if the defendant were being served personally abroad: see *Holmsted & Langton*, p. 282.

The omission of the N.B., where it is necessary, is an irregularity which may be condoned under Rule 310.

Notice of writ, in lieu of writ, to be given out of Ontario.
(Rule 128).

37

Notice of writ
in lieu of writ
to be given to
a defendant
who is not
a British sub-
ject out of
Ontario. (a)

In the High Court of Justice.

Between A.B.,

and

Plaintiff,

C.D., E.F., and G.H.,

Defendants.

To G.H., of

Take notice that A.B., of _____, has commenced an action against you, G.H., in _____ His Majesty's High Court of Justice in Ontario, by writ of that Court, dated the _____ day of _____, A.D. 19____; which writ is indorsed as follows [*copy in full the indorsements*], and you are required within [_____] days after the receipt of this notice and of the plaintiff's statement of claim, inclusive of the day of such receipt, to defend the said action, by causing an appearance to be entered for you in the said Court, to the said action, and your defence thereto, if any, to be delivered: and in default of your so doing, the said A.B. may proceed therein, and judgment may be given in your absence on the plaintiff's own shewing, and you may be deemed to have admitted the plaintiff's claim, and (subject to Rules of Court) will not be entitled to notice of any further proceedings therein.

You may appear to the said writ by entering an appearance personally, or by your solicitor at the [_____] office at

Dated, &c.

(Signed)

A.B., of

&c.

or

X.Y., of

&c.

Solicitor for A.B.

N.B.—This notice is to be used when the person to be served is not a British subject, and is not in British dominions. (b).

Indorsement to be made on the notice of the writ after service thereof:

This notice was served by X.Y., on G.H., (the defendant or one of the defendants) on the _____ day of _____, 19____.
Indorsed the _____ day of _____, 19____.

(Signed)

(Address)

Con. Rules, 1888, Form 3.

SECTION II.—INDORSEMENTS ON WRITS OF SUMMONS.

38

Money Claims where no special Indorsement under Rule 138 (r). Indorsements of claim.

The plaintiff's claim is \$ for the price of goods sold.
sold. Goods sold.

This Form shall suffice whether the claim be in respect of goods sold and delivered, or of goods bargained and sold.

The plaintiff's claim is \$ for money lent [and in- Money lent.
terest].

The plaintiff's claim is \$ whereof \$ is for Several
the price of goods sold, and \$ for money lent, and demands.
\$ for interest.

The plaintiff's claim is \$ for arrears of rent. Rent.

The plaintiff's claim is \$ for arrears of salary as a Salary, etc.
clerk [or as the case may be].

The plaintiff's claim is \$ for interest upon money Interest.
lent.

The plaintiff's claim is \$ for a general average General
contribution. average.

The plaintiff's claim is \$ for freight and demur- Freight, etc.
rage.

The plaintiff's claim is \$ for penalties under the Penalties.
Statute Victoriae, chap. [. .]

The plaintiff's claim is \$ for money deposited with Banker's
the defendant as a banker. balance.

The plaintiff's claim is \$ for fees for work done Fees, etc., as
[and \$ for money expended] as a solicitor. solicitor.

The plaintiff's claim is \$ for commission as [state Commission.
character as auctioneer, broker, &c.]

The plaintiff's claim is \$ for medical attendance. Medical atten-
dance, etc.

The plaintiff's claim is \$ for a return of premiums Return of pre-
paid upon policies of insurance. miums.

The plaintiff's claim is \$ for the warehousing of Warehouse
goods. rent.

The plaintiff's claim is \$ for the carriage of goods Carriage of
by railway. goods.

The plaintiff's claim is \$ for the use and occupa- Use and occu-
tion of a house. pation of
house.

Hire of goods.	The plaintiff's claim is \$	for the hire of [furniture].
Work done.	The plaintiff's claim is \$	for work done [as surveyor, &c.].
Board and lodging.	The plaintiff's claim is \$	for board and lodging.
Schooling.	The plaintiff's claim is \$	for the board, lodging and tuition of X.Y.
Money received.	The plaintiff's claim is \$	for money received by the defendant as solicitor [or factor, or collector, or &c.] of the plaintiff.
Fees of office.	The plaintiff's claim is \$	for fees received by the defendant under colour of the office of
Money overpaid.	The plaintiff's claim is \$	for the return of money overcharged for the carriage of goods by railway.
	The plaintiff's claim is \$	for a return of fees overcharged by the defendant as
Return of money by stakeholder.	The plaintiff's claim is \$	for a return of money deposited with the defendant as stakeholder.
Money won from stakeholder.	The plaintiff's claim is \$	for money entrusted to the defendant as stakeholder, and become payable to plaintiff.
Money entrusted to agent.	The plaintiff's claim is \$	for a return of money entrusted to the defendant as agent of the plaintiff.
Money obtained by fraud.	The plaintiff's claim is \$	for a return of money obtained from the plaintiff by fraud.
Money paid by mistake.	The plaintiff's claim is \$	for a return of money paid to the defendant by mistake.
Money paid for consideration which has failed.	The plaintiff's claim is \$	for a return of money paid to the defendant for [work to be done, left undone; or a bill to be taken up, not taken up, &c.]
	The plaintiff's claim is \$	for a return of money paid as a deposit upon shares to be allotted.
Money paid by surety for defendant.	The plaintiff's claim is \$	for money paid for the defendant as his surety.
Rent paid.	The plaintiff's claim is \$	for money paid, for rent due by the defendant.
Money paid on accommodation bill.	The plaintiff's claim is \$	upon a bill of exchange accepted [or indorsed] for the defendant's accommodation.
Contribution as surety.	The plaintiff's claim is \$	for a contribution in respect of money paid by the plaintiff as surety.
By co-debtor.	The plaintiff's claim is \$	for a contribution in respect of a joint debt of the plaintiff and the defendant, paid by the plaintiff.

The plaintiff's claim is \$ for money paid for calls Money paid upon shares, against which the defendant was bound to in- for calls.
demnify the plaintiff.

The plaintiff's claim is \$ for money payable under Money payable under an award.
an award.

The plaintiff's claim is \$ upon a policy of insur- Life policy.
ance upon the life of *X.Y.*, deceased.

The plaintiff's claim is \$ upon a bond to secure Money bond.
payment of \$1,000 and interest.

The plaintiff's claim is \$ upon a judgment of Foreign judgment.
the Court, in the Province of Quebec.

The plaintiff's claim is \$ upon a cheque drawn by Bill of exchange, etc.
the defendant.

The plaintiff's claim is \$ upon a bill of exchange
accepted [*or drawn or indorsed*] by the defendant.

The plaintiff's claim is \$ upon a promissory note
made [*or indorsed*] by the defendant.

The plaintiff's claim is \$ against the defendant
A.B. as acceptor, and against the defendant *C.D.* as drawer
[*or indorser*] of a bill of exchange.

The plaintiff's claim is \$ against the defendant as Surety.
surety for the price of goods sold.

The plaintiff's claim is \$ against the defendant
A.B. as principal, and against the defendant *C.D.* as surety for
the price of goods sold [*or arrears of rent, or for money lent,*
or for money received by the defendant A.B., as traveller
for the plaintiffs, or &c.]

The plaintiff's claim is \$ for calls upon shares. Calls.

Con. Rules, 1888, Form 4.

Money Claims—Special Indorsements under Rule 138.

39

1. The plaintiff's claim is for money received by the de- Money had
fendant for the use of the plaintiff. The following are the and received.
particulars:— (a)

19. .—2nd January.—

To amount of rents of No. 5 Smith Street, collect-
ed by defendant\$300

To deposit on intended sale of Blythe Cottage.... 400

Amount due\$700

Place of trial, Toronto.

Add Form No. 50.

(a) Nos. 39 to 47 constitute Form 5 of Con. Rules, 1897.

40Goods sold
and delivered.

2. The plaintiff's claim is for the price of goods sold. The following are the particulars:—

19..—31st December.—

Balance of account for butcher's meat to this date. \$142

19..—1st January to 31st March.—

Butcher's meat supplied..... 297

\$439

19..—1st February.—Paid 180

Balance due \$259

Place of trial, Toronto.

*Add Form No. 50.***41**

Guarantee.

3. The plaintiff's claim is against the defendant *A.B.* as principal, and against the defendant *C.D.* as surety, for the price of goods sold to *A.B.* The following are the particulars:—19..—2nd February. Guarantee by *C.D.* of the price of woollen goods to be supplied to *A.B.*

2nd February—To goods.....\$225

3rd March—To goods..... 151

17th March—To goods 27

5th April—To goods..... 65

\$468

Place of trial, Ottawa.

*Add Form No. 50.***42**Promissory
note.

4. The plaintiff's claim is against the defendant, as maker of a promissory note. The following are the particulars:—

Promissory note for \$1,000, dated 1st January, 19 , made by defendant, payable 4 months after date.

Principal\$1,000

Interest

Notarial charges

Place of trial, London.

*Add Form No. 50.***43**Bill of ex-
change.5. The plaintiff's claim is against the defendant *A.B.* as acceptor, and against the defendant *C.D.* as drawer of a bill of exchange. The following are the particulars:—

Bill of exchange for \$2,000, dated 1st January, 19 ,
drawn by defendant *C.D.* upon and accepted by defendant
A.B., payable 3 months after date.

Principal\$2,000

Interest

Notarial charges

Place of trial, Hamilton.

Add Form No. 50.

6. The plaintiff's claim is for principal and interest due **44**
upon a bond. The following are the particulars:— Bond.

Bond dated 1st January, 19 . Conditioned for payment
of \$500 on the 26th December, 19 .

Principal due\$500

Interest

Place of trial, Belleville.

Add Form No. 50.

7. The plaintiff's claim is for principal and interest due **45**
under a covenant. The following are the particulars:— Covenant.

Deed dated covenant to pay \$3,000 and interest.

Principal due\$800

Interest

Place of trial, Kingston.

Add Form No. 50.

Con. Rules, 1888, Form 7.

8. The plaintiff's claim is to recover possession of a farm **46**
and premises called lot No. 1 in the 5th Con. of the Tp. Recovery of possession by landlord.
of in the County of , which was let to the de-
fendant by the plaintiff for the term of 3 years from the 29th
day of September, 19 , which term has expired (*or* as tenant
from year to year from the 29th day of September, 19),
which term has expired (*or* as tenant from year to year from
the 29th day of September, 19 , which said tenancy became
duly determined by notice to quit on the 29th day of Septem-
ber, 19).

The plaintiff also claims \$ for mesne profits.

Place of trial, Lindsay.

[See Eng. Rules, 1883, App. (sec. 7).]

9. The plaintiff's claim is to recover possession of (*or* for **47**
the return of) [a certain stallion named "Disturbance," *or* as Detinue or recovery of chattels.

the case may be], unlawfully detained by the defendant, of which the plaintiff is [the owner and] lawfully entitled to the possession.

Place of trial, Toronto.

48

Against share-
holder for al-
lotment
money and
calls by a com-
pany.

10. The plaintiffs' claim is for money in which the defendant as a member of the company is indebted to the plaintiffs [being a company incorporated under (*state the Act*).] for allotment money of \$ per share, on shares in the company allotted to the defendant as such member at his request; and for calls of \$ each upon shares in the company, of which the defendant is a holder, whereby an action has accrued to the plaintiffs.

Particulars:—

Jany. 14, 19	. Allotment of		shares to the
defendant at \$		per share\$
March 1, 19	. 1st call at \$5	per share	.....
June 1st, 19	. 2nd call at \$5	per share	.....

Amount due\$

Add Form No. 50.

49

Debt upon a
trust.

11. The plaintiff's claim is against the defendants as trustees under the settlement upon the marriage of *A.B.* and *X.Y.*, dated January 1st, 19 , whereby \$40,000 invested on mortgage of land at *Z.* was vested in the defendants as trustees upon trust to pay the income thereof half yearly to the plaintiff.

Particulars:—

19.. December 25th, half a year's income, \$1,200.

50

Indorsement
for costs. (a)

Indorsement for Costs, &c. (Rule 139.)

[Add to the above forms for money claims in Nos. 38 to 49.] And the plaintiff claims \$ for costs; and if the amount claimed be paid to the plaintiff or his solicitor within days from the service hereof, further proceedings will be stayed.

Con. Rules, 1888, Form 5.

Con. Rule (1903), 1205.

Indorsements on Writs for Damages and other Claims.

51

Indorsements
for damages,
etc. (b)
Agent, etc.

The plaintiff's claim is for damages for breach of a contract to employ the plaintiff as traveller.

The plaintiff's claim is for damages for wrongful dismissal from the defendant's employment as traveller [and \$ for arrears of wages.]

The plaintiff's claim is for damages for the defendant's wrongfully quitting the plaintiff's employment as manager.

The plaintiff's claim is for damages for breach of duty as factor [or &c.] of the plaintiff [and \$ for money received as factor, &c.]

The plaintiff's claim is for damages for breach of the terms of a deed of apprenticeship of X.Y. to the defendant [or plaintiff].

The plaintiff's claim is for damages for non-compliance with the award of X.Y. Arbitration.

The plaintiff's claim is for damages for assault [and false imprisonment, and for malicious prosecution]. Assault, etc.

The plaintiff's claim is for damages for assault and false imprisonment of the plaintiff C.D. By husband and wife.

The plaintiff's claim is for damages for assault by the defendant C.D.

The plaintiff's claim is for damages for injury by the defendant's negligence as solicitor of the plaintiff. Solicitor.

The plaintiff's claim is for damages for negligence in the custody of goods [and for wrongfully detaining the same.] Bailment.

The plaintiff's claim is for damages for negligence in the keeping of goods pawned [and for wrongfully detaining the same]. Pledge.

The plaintiff's claim is for damages for negligence in the custody of furniture lent on hire [or a carriage lent], [and for wrongfully, &c.]. Hire.

The plaintiff's claim is for damages for wrongfully neglecting [or refusing] to pay the plaintiff's cheque. Banker.

The plaintiff's claim is for damages for breach of a contract to accept the plaintiff's drafts. Bill.

The plaintiff's claim is upon a bond conditioned not to carry on the trade of a Bond.

The plaintiff's claim is for damages for refusing to carry the plaintiff's goods by railway. Carrier.

- Carrier. The plaintiff's claim is for damages for refusing to carry the plaintiff by railway.
 The plaintiff's claim is for damages for breach of duty in and about the carriage and delivery of coals by railway.
 The plaintiff's claim is for damages for breach of duty in and about the carriage and delivery of machinery by sea.
- Charter-party. The plaintiff's claim is for damages for breach of charter-party of ship [*Mary*].
- Damages for depriving of goods. The plaintiff's claim is for damages for wrongfully depriving plaintiff of goods, household furniture, &c.
- Defamation. The plaintiff's claim is for damages for libel.
 The plaintiff's claim is for damages for slander.
- Distress. The plaintiff's claim is to recover possession of goods wrongfully distrained.
- Replevin. The plaintiff's claim is to recover possession of goods wrongfully distrained.
- Wrongful distress. The plaintiff's claim is for damages for improperly distraining.
[This form shall be sufficient whether the distress complained of be wrongful or excessive, or irregular, and whether the claim be for damages only, or for double value.]
- Fishery. The plaintiff's claim is for damages for infringement of the plaintiff's right of fishing.
- Fraud. The plaintiff's claim is for damages for fraudulent misrepresentation on the sale of a horse [*or a business, or shares, or &c.*].
 The plaintiff's claim is for damages for fraudulent misrepresentation of the credit of *A.B.*
- Guarantee. The plaintiff's claim is for damages for breach of a contract of guarantee for *A.B.*
 The plaintiff's claim is for damages for breach of a contract to indemnify the plaintiff as the defendant's agent to distrain.
- Insurance. The plaintiff's claim is for loss under a policy upon the ship "*Royal Charter*," and freight *or* cargo [*or for return of premiums*].
[This Form shall be sufficient whether the loss claimed be total or partial.]
- Fire insurance. The plaintiff's claim is for a loss under a policy of fire insurance upon house and furniture.
- Landlord and tenant. The plaintiff's claim is for damages for breach of a contract to insure a house.

The plaintiff's claim is for damages for breach of a contract to keep a house in repair.

The plaintiff's claim is for damages for breaches of covenants contained in the lease of a farm.

The plaintiff's claim is for damages for injury to the plaintiff from the defendant's negligence as a medical man. Medical man.

The plaintiff's claim is for damages for injury by the defendant's dog. Mischievous animal.

The plaintiff's claim is for damages for injury to the plaintiff *[or, if by husband and wife, to the plaintiff C.D.]* by the negligent driving of the defendant or his servants. Negligence.

The plaintiff's claim is for damages for injury to the plaintiff while a passenger on the defendant's railway by the negligence of the defendant's servants.

The plaintiff's claim is for damages for injury to the plaintiff at the defendant's railway station, from the defective condition of the station.

The plaintiff's claim is as executor of *A.B.*, deceased, for damages for the death of the said *A.B.*, from injuries received while a passenger on the defendant's railway, by the negligence of the defendant's servants. Lord Campbell's Act.

The plaintiff's claim is for damages for breach of promise of marriage. Promise of marriage.

The plaintiff's claim is for damages for the seduction of the plaintiff's daughter. Seduction.

The plaintiff's claim is for damages for breach of contract to accept and pay for goods. Sale of goods.

The plaintiff's claim is for damages for non-delivery *[or short delivery or defective quality, or other breach of contract of sale]* of cotton *[or, &c.]*

The plaintiff's claim is for damages for breach of warranty of a horse.

The plaintiff's claim is for damages for breach of a contract to sell *[or purchase]* land. Sale of land.

The plaintiff's claim is for damages for breach of a contract to let *[or take]* a house.

The plaintiff's claim is for damages for breach of a contract to sell *[or purchase]* the lease, with goodwill, fixtures, and stock-in-trade of a public-house.

The plaintiff's claim is for damages for breach of covenant for title *[or for quiet enjoyment, or, &c.]* in a conveyance of land.

Trespass to
land.

The plaintiff's claim is for damages for wrongfully entering the plaintiff's land and drawing water from his well [or cutting his grass, *or* pulling down his timber, *or* pulling down his fence, *or* removing his gate, *or* using his road *or* path, *or* crossing his field, *or* depositing sand there, *or* carrying away gravel from thence, *or* carrying away stones from his river.]

Support.

The plaintiff's claim is for damages for wrongfully taking away the support of plaintiff's land [*or* house *or* mine].

Way.

The plaintiff's claim is for damages for wrongfully obstructing a way [public highway *or* private way].

Watercourses,
etc.

The plaintiff's claim is for damages for wrongfully diverting [*or* obstructing, *or* polluting, *or* diverting waters from] a watercourse.

The plaintiff's claim is for damages for wrongfully discharging water upon the plaintiff's land [*or* into plaintiff's mine].

The plaintiff's claim is for damages for wrongfully obstructing the plaintiff's use of a well.

Pasture.

The plaintiff's claim is for damages for the infringement of the plaintiff's right of pasture.

[This Form shall be sufficient whatever the nature of the right to pasture be].

Light.

The plaintiff's claim is for damages for obstructing the access of light to plaintiff's house.

Patent.

The plaintiff's claim is for damages for the infringement of the plaintiff's patent.

Copyright.

The plaintiff's claim is for damages for the infringement of the plaintiff's copyright.

Trade mark.

The plaintiff's claim is for damages for wrongfully using [*or* imitating] the plaintiff's trade mark.

Work.

The plaintiff's claim is for damages for breach of contract to build a ship [*or* repair a house, &c.].

The plaintiff's claim is for damages for breach of a contract to employ the plaintiff to build a ship, &c.

Nuisance.

The plaintiff's claim is for damages to his house, trees, crops, &c., caused by noxious vapours from the defendant's factory [*or*, &c.].

The plaintiff's claim is for damages from nuisance by noise from the defendant's works [*or*, &c.].

Innkeeper.

The plaintiff's claim is for damages for loss of the plaintiff's goods in the defendant's inn.

The plaintiff's claim is for return of household furniture [or, &c.], or their value, and for damages for detaining the same. Claim for return of goods : damages.

The plaintiff's claim is for dower out of lot number (or Dower. describing the property otherwise with reasonable certainty). And take notice that the plaintiff claims damages for the detention of her dower from the day of

The plaintiff's claim is to recover possession of a house, No. in street, in [the City of Ottawa; or Recovery of land. ✓ of the N. E. $\frac{1}{4}$ of lot 2, in the 3rd concession of the Township of in the County of].

The plaintiff's claim is to establish his title to [here describe property], and to recover the rents thereof. To establish title and recover rents. ✓

[The two previous forms may be combined.]

After an indorsement of a claim to land, or to establish title, or both, there may be added:

And for mesne profits.

Mesne profits.
Arrears of rent.
Breach of covenant.

And for an account of rents or arrears of rent.

And for breach of covenant for [repairs].

It to be added to an indorsement if a mandamus is claimed:

And for a mandamus commanding the defendant to.

Mandamus.

To be added to an indorsement if an injunction is claimed:

And for an injunction to restrain the defendant from.

Injunction.

Con. Rules, 1888, Form 6.

52

The plaintiff's claim is for \$ for damages for personal injuries to the plaintiff C.B. (the wife) whilst a passenger on the defendant's railway through the negligence of the defendant's servants. The plaintiff A.B. also claims damages for the loss of comfort and services of his wife the said C.B., and expenses incurred. Claim by or against husband and wife — Negligence.

The plaintiff's claim is against both the defendants for Libel, &c. \$ for damages for libel by the defendant C.B. (the wife), and also against the defendant A.B. (the husband) for \$

53

Indorsements of Character of Parties. (Rule 120).

Indorsement of character of parties. (a)
Executor.

The plaintiff's claim is as executor [or administrator] of C.D., deceased, for &c.

(a) Con. Rules, 1897, Form 8.

The plaintiff's claim is against the defendant *A.B.*, as executor [*or, &c.*], of *C.D.*, deceased, for, &c.

The plaintiff's claim is against the defendant *A.B.*, as executor of *X.Y.*, deceased, and against the defendant *C.D.*, in his personal capacity, for, &c.

Against executrix.

The claim of the plaintiff is against the defendant as executrix of *C.D.* deceased, for

Assignee in insolvency.

The plaintiff's claim is as assignee in insolvency of *A.B.*, for

The plaintiff's claim is against the defendant as assignee in insolvency of *A.B.*, for

Trustees.

The plaintiff's claim is as [*or the plaintiff's claim is against the defendant as*] trustee under the will of *A.B.* [*or under the settlement upon the marriage of A.B. and X.Y., his wife*].

Heir and devisee.

The plaintiff's claim is against the defendant as heir-at-law of *A.B.*, deceased.

The plaintiff's claim is against the defendant *C.D.*, as heir-at-law, and against the defendant *E.F.*, as devisee of lands under the will of *A.B.*

Qui tam action.

The plaintiff's claim is as well for the King as for himself, for

Con. Rules, 1888, Form 8.

Claims for equitable relief. (2)

Indorsements of Claims to equitable Relief. (Rules 137, 140, 141.)

54

Creditor for administration.

(a) *Creditor to administer Estate.*

The plaintiff's claim is as a creditor of *X.Y.*, of deceased, to have the [real and] personal estate of the said *X.Y.*, administered. The defendant *C.D.* is sued as the administrator (*or executor*) of the said *X.Y.* [and the defendants *E.F.* and *G.H.* as his co-heirs-at-law].

55

Legatee for same.

(b) *Legatee to administer Estate.*

The plaintiff's claim is as a legatee under the will dated the _____ day of _____, 19____, of *X.Y.*, deceased, to have the [real and] personal estate of the said *X.Y.* administered. The defendant *C.D.* is sued as the executor of the said *X.Y.* [and the defendants *E. F.* and *G.H.* as his devisees].

(a) Nos. 54-64, inclusive, constitute Con. Rules, 1897, Form 9.

(c) *Partnership Account.*

56

The plaintiff's claim is to have an account taken of the partnership dealings between the plaintiff and defendant [under articles of partnership dated the day of], and to have the affairs of the partnership wound up.

Partnership account.

(d) *By Mortgagee for Sale, and for immediate Payment, and Possession.*

57

The plaintiff's claim is on a mortgage dated the day of made between [or by deposit of title deeds], and that the mortgage may be enforced by sale [where desired add, and payment to the plaintiff by the defendant personally of any balance].

Mortgagee for sale, etc.

If immediate payment is desired add, And to recover from you the defendant (naming the defendant against whom the relief is claimed) payment of the amount due under a covenant by [you] in that behalf contained in said mortgage (or as the case may be).

If immediate possession is desired add, And to recover immediate possession of the mortgaged premises.

And take notice that the plaintiff claims that there is now due by you for principal money the sum of \$ [If so add and for taxes (or premiums of insurance or other matters) the sum of \$] and for interest the sum of \$, and that you are liable to be charged with these sums with subsequent interest to be computed at the rate of per centum per annum and costs in and by the judgment to be drawn up, and that in default of payment thereof within six calendar months from the time of drawing up the judgment your interest in the property may be sold, unless before the time allowed you for appearance you file in the office within named a memorandum in writing entitled in this action and signed by yourself or your solicitor to the following effect: "I dispute the amount claimed by the plaintiff in this action," in which case you will be entitled to four days' notice of the taking of the account of the amount due to the plaintiff.

The following is a description of the mortgaged premises: (Set out description sufficient for registration).

(e) *By Mortgagee for Foreclosure, and for immediate Payment and Possession.*

58

The plaintiff's claim is on a mortgage dated the day of made between [or by deposit of title deeds], and that the mortgage may be enforced by foreclosure.

Foreclosure—
immed ate
payment and
possession.

If immediate payment is desired add, And to recover from you the defendant (naming the defendant against whom the relief is claimed) payment of the amount due under a covenant by [you] in that behalf contained in said mortgage (or as the case may be).

If order for immediate possession is desired add, And take notice further that the plaintiff claims to be entitled to recover immediate possession of the mortgaged premises.

And take notice that the plaintiff claims that there is now due by you for principal money the sum of \$ [If so add, and for taxes (or premiums of insurance or other matters) the sum of \$] and for interest the sum of \$, and that you are liable to be charged with these sums and subsequent interest to be computed at the rate of per centum per annum and costs, in and by the judgment to be drawn up, and that in default of payment thereof within six calendar months from the time of drawing up the judgment your interest in the property may be foreclosed unless before the time allowed you for appearance you file in the office within named a memorandum in writing entitled in this action and signed by yourself or your solicitor to the following effect:—"I dispute the amount claimed by the plaintiff in this action" in which case you will be entitled to four days' notice of the taking of the account of the amount due to the plaintiff.

If you desire a sale of the mortgaged premises instead of a foreclosure, and do not intend to defend the action, you must within the time allowed for appearance, file in the office within named, a memorandum in writing, entitled in this action and signed by yourself or your solicitor, to the following effect:—"I desire a sale of the mortgaged premises in the plaintiff's writ of summons mentioned, or a competent part thereof, instead of a foreclosure," and you must deposit in Court to the credit of this action the sum of \$80 to meet the expenses of such sale and attach to the said memorandum a certificate of the Accountant of the Supreme Court to the effect that such deposit of \$80 has been made.

The following is a description of the mortgaged premises: (*Set out description sufficient for registration*).

(f) *By Mortgagor for Redemption.*

59
Redemption.

The plaintiff's claim is to have an account taken of what, if anything, is due on a mortgage dated and made between [parties], and to redeem the property comprised therein.

(g) *Raising portions.* **60**

The plaintiff's claim is that the sum of \$, which ^{Raising portions.} by an indenture of settlement dated , was provided for the portions of the younger children of may be raised.

(h) *Execution of trusts.* **61**

The plaintiff's claim is to have the trusts of an indenture ^{Trusts.} dated and made between , carried into execution.

(i) *Cancellation or Rectification.* **62**

The plaintiff's claim is to have a deed dated and ^{and Rectification.} made between [parties], set aside or rectified.

(j) *Specific Performance.* **63**

The plaintiff's claim is for specific performance of an ^{Specific performance.} agreement dated the day of , for the sale by the plaintiff to the defendant of certain [freehold] hereditaments at

(k) *Alimony.* **64**

The plaintiff's claim is for alimony; and the plaintiff de- ^{Alimony.} mands as interim alimony until the trial of the action the monthly (or weekly) sum of \$ to be paid to her on the day of each month (or week) at and the interim costs to which she is entitled by the practice in that behalf.

NOTE.—Where the plaintiff desires to register a certificate of lis pendens the indorsement on the writ of summons may contain such short description of the property as may be necessary or proper for that purpose.

Con. Rules 1888. Form 9, Rules of 1st January, 1896, 1506, 1507.

Fraudulent Conveyance.

The plaintiff's claim is on behalf of himself and all others, ^{Fraudulent conveyance.} the creditors of the defendant E.F., to have the following deed set aside and declared fraudulent and void as against the plaintiff and the other creditors of the defendant E.F., to wit: a deed dated 19 , from the said E.F. to the said C.D. of the following lands, being (describing them), and the plaintiff also claims on behalf of himself and said creditors to have it declared that a certain judgment obtained by said

C.D., against said E.F., in this Court on the for the sum of \$ was and is fraudulent and void, and that the same and the executions issued thereunder be set aside and cancelled. **66**
Fraudulent judgment.

2. It is ordered that the writ in this action be renewed for twelve months from the date of this order (c).

Con. Rules 1888, Form 124.

Praeceptum for renewed writ: see No. 377.

69

Praeceptum for renewed writ.

SECTION IV.—SERVICE OF WRITS AND AFFIDAVITS OF SERVICE.

Affidavit of Service of Writ of Summons. (Rules 145-150).

In the High Court of Justice.

Between *A.B.*, Plaintiff,
and
C.D., Defendant.

70

Affidavit of personal service. (d)

I, _____ of _____ make oath and say as follows:—

(1) I did on the _____ day of _____ 19____, personally serve *C.D.*, the above-named defendant in this action with a true copy of the writ of summons (or notice of the writ of summons) herein, hereto annexed, by delivering the same to and leaving the same with the said defendant on the day last aforesaid at _____ in the County of _____

(2) Upon the said copy so served as aforesaid was indorsed at the time of such service true copies of all the indorsements appearing upon the said original writ of summons (or notice) except the indorsement hereinafter mentioned.

(3) To effect such service I necessarily travelled _____ miles.

(4) Subsequently, namely upon the _____ day of _____ I did indorse upon the said original writ of summons (or notice) the day of the month and week of such service.

Sworn, &c.

Con. Rules, 1888, Form 45.

(c) A writ of summons cannot be renewed after its expiration: Rule 132 (1); nor can it be renewed without an order: *Gilmour v. Magee*, 14 P. R. 120.

(d) Con. Rules, 1897, Form 17.

(Shortened style of cause: see Form 25.)

71

Acceptance of
service of writ
by solicitor.
(a)

I accept service this day of the writ of summons herein as solicitor for the defendants C. D., and G. H. [and I undertake to enter an appearance therein within ten days (Or as may be) from this date inclusive on behalf of the said defendants C. D. and G. H.].

Dated this day } Y.Z.,
 of 19 } Solicitor for Defendants
 C. D. and G. H.

72

Affidavit of
service on
manager of a
firm.

(Formal parts as in No. 744.)

1. I did on the day of 19 , at being the principal place, within the jurisdiction of this Honourable Court, of business of the above named defendant partnership serve the person having at the time of such service the control or management of the said partnership business there personally, with a true copy of the writ of summons herein hereto annexed, by delivering the same to and leaving the same with the said .

2. As in paragraph 2, No. 70.

3. At the time of the said service I delivered to the person so served as aforesaid a true copy of the notice also hereto annexed.

4. }
5. } As in paragraphs 3 and 4, No. 70.

73

Affidavit of
service on
partner.

(Formal parts as in preceding Form.)

1. I did on the day of 19 , personally serve C.D. the partner in the above named defendant firm of C.D. & Co., with a true copy of the writ of summons herein hereto annexed by delivering the same to and leaving the same with the said C.D. on the day last aforesaid at in the County of

2. I did at the time of such service deliver to the said C.D. a true copy of the notice also hereto annexed.

3. }
4. } As in paragraphs 3 and 4, No. 70.

(a) This acceptance of service must be verified by affidavit in order to enter judgment for default of appearance: see Rule 574.

(*Court and style of cause: see No. 35.*)

Take notice that the writ served herewith is served on you as a person having the control or the management of the partnership business of the above named firm of (if he be also a partner add "and also a partner in the said firm").

74

Notice to manager of a firm when served with writ for the firm.

Plaintiffs' Solicitors.

Order for Substituted Service. (Rules 146, 167.)

In the High Court of Justice.

The Master in Chambers (*or as may be*)

[*Date.*]

Between

Plaintiff,

and

Defendant.

1. Upon the application of , and upon reading the affidavit of filed, and upon hearing the Solicitor for the plaintiff

2. It is ordered that service of a copy of this order, and of a copy of the writ of summons in this action, by sending the same by a prepaid and registered post letter, addressed to the defendant (*b*), at , shall be good and sufficient service of the writ.

Con. Rules, 1888, Form 122.

(*Formal parts: see No. 744.*)

I, of the City of in the County of Solicitor for the plaintiff, make oath and say:—

1. I am the Solicitor for the plaintiff herein.

2. On the day of 19 , I delivered a Writ of Summons herein and a copy thereof to the Sheriff of the County of with instructions to him to effect service thereof upon the above named defendant.

76

Affidavit in support of motion for substituted service.

(a) Con. Rules, 1897, Form 107.

(b) Where substituted service has been ordered in some other manner than by mailing an order may be framed accordingly from the above form.

3. The said Sheriff has not been able to effect such service, and I have received from him the letter now shewn to me and marked Exhibit "A," as to the efforts which he has made to effect service of the said writ.

4. *Shew grounds for substitutional service in the manner proposed.*

(The affidavit may be made by the officer who has attempted to effect personal service, or such affidavit may be used in addition to the affidavit of the Solicitor.)

77

Order for substituted service on agent and by mailing.

(Formal parts as in No. 902.)

It is ordered that service of a copy of the writ of summons in this action and of this order upon C.D. [together with service of a copy of each by sending the same by post by prepaid letter directed to the defendant at] be good and sufficient service of the writ of summons herein.

78

Order for service by publication.

In the High Court of Justice.

[The Master in Chambers]

the day of A.D. 19

Between A.B.,

Plaintiff,

and

C.D., E.F. and G.F.,

Defendants.

Upon the application of the plaintiff, upon hearing the solicitor for the applicant, and upon reading the affidavit of and filed herein.

(1) It is ordered that service upon the defendants E.F. and G.F. of the writ of summons and statement of claim in this action by publishing this order, together with the notice thereon indorsed [once a week for three weeks preceding the 25th day October, 19 , in "The Globe" newspaper, published at Toronto, *as may be directed*] be deemed good and sufficient service of said writ and statement of claim.

(2) And it is further ordered that the said defendants E.F. and G.F. do enter an appearance and file their statement of defence to the said writ of summons in [the Central Office at Osgoode Hall in the City of Toronto] on or before the day of A.D. 19 .

(Signed) J. W.

NOTICE.

The plaintiff's claim is on a mortgage dated the 11th April, 19 , made by the defendant, E.F. and his wife, G.F. to A.B.

79
Notice to be
appended and
published with
the order.

And the plaintiff claims that there is now due for principal the sum of \$2,500, and for interest the sum of \$134.87, and the plaintiff claims that the said mortgage may be enforced by foreclosure (*or as the case may be*).

(Signed) J. W.

(Formal parts: see No. 744).

I , of , in the County of [yeoman] (*Or as may be*), make oath and say:

80
Affidavit
proving sub-
stitutional
service of
writ.

1. That I did, on the day of , 19 , personally serve [John Brown, Esquire, of the City of , Solicitor] (*Or other person on whom service is directed to be effected*), with a true copy of the writ of summons hereto annexed by delivering the same to and leaving the same with the said [John Brown], at the office of the said John Brown, in the said City of , and at the same time and place I did also personally serve the said [John Brown] with the order now shewn to me, and marked as Exhibit A (*a*), by delivering to and leaving with him a true copy of the said order.

(Formal parts: as in No. 744.)

1. That I did on the fifteenth day of June, 19 , serve the Defendant C.D., with a true copy of the writ of summons herein hereto annexed by mailing the same, together with a true copy of the order now produced and shewn to me marked A. (*a*), through the General Post Office, in a pre-paid registered letter addressed to the Defendant, C.D., as follows:—

81
Affidavit
proving ser-
vice of writ by
mailing.

“Mr. C. D.,
“ Bay City Post Office,
“ Michigan,
“ U. S. A.”

(*a*) The Exhibit is the order allowing service to be effected in the manner sworn to.

(*Formal parts: as in No. 744.*)

Affidavit
proving publi-
cation of ad-
vertisement.

1. A true copy of the advertisement now produced and shewn to me, marked as Exhibit A., appeared and was published in each issue of the newspaper, published at
on the and days of .
2. I have examined copies of the said newspaper
issued at on each of the said days.

Sworn, &c.

(*Formal parts: as in Form No. 744.*)

82

Affidavit of
service of writ
on Corpora-
tion. (a)

I, , of , in the County of [Sheriff's officer]
(or as may be), make oath and say:

1. I did on the day of , 19 , serve the defend-
ants [The Ontario Company, Limited] with a true copy
of the writ of summons herein hereto annexed, by delivering
the same to and leaving the same with Mr. A. B., the Presi-
dent (or as may be), of the said The Ontario Company,
Limited, at the head office (a) of the said Company, at the
Town of , in the County of .

(Continue as in Form 70, according to the circumstances.)

83

Affidavit in
support of
motion for ser-
vice of writ by
publication of
an advertise-
ment.

(*Formal parts: see No. 744.*)

1. The plaintiff's writ in this cause was filed on the , 19 , against the defendant A. B.
2. Shew the circumstances under which the order is ap-
plied for, such as that the defendant is temporarily absent
from his usual place of residence, and that upon inquiry at
his usual place of abode he could not be found, so as to be
served with a copy of the writ or other process; or that there
is just ground to believe that he has gone out of the jurisdic-
tion, or otherwise absconded, to avoid being served with the
copy of the writ or other process of the Court. Shew that the
proposed manner of advertising is likely to come to defend-
ant's knowledge. It should also be shewn whether or not the
defendant has left any relations within the jurisdiction; and
if he have, an affidavit should be obtained from some or one
of them, as to his whereabouts, or if they refuse to make affi-
davit they may be orally examined before a Local Registrar,
Master, Deputy Clerk of the Crown, or Special Examiner, as
to the defendant's whereabouts (b).

(a) See Rules 159-161.

(b) See Rules 443 and 491.

SECTION V.—SERVICE OUT OF THE JURISDICTION.

In the High Court of Justice.

In the matter of The Ontario Judicature Act,
And in the matter of an intended action between
A.B.,
Plaintiff,
and
C. D. and E. F.,
Defendants.

I, , of [*&c.*, see No. 744].

1. That I am desirous of commencing an action in this Honourable Court against the above named defendants for the purpose of (*here state the cause of action bringing the case within one of the classes mentioned in Con. Rule 162, e.g., recovering possession of (describing lands within the jurisdiction)*);

Or, construing the will of X. L., in so far as it effects the following lands, viz., (*describing lands within the jurisdiction*);

Or, recovering from the said C.D. & E.F., who are domiciled or ordinarily resident within the jurisdiction of this Honourable Court, though now temporarily absent therefrom the sum of \$ due and owing on (*State nature of debt*);

Or, administering the estate of the late R. T. deceased, who at the time of his death was domiciled at within the jurisdiction of this Honourable Court;

Or obtaining the due execution of the trusts of a certain deed of assignment for the benefit of creditors, made by D. B., of to the said C. D. and E. F., whereby certain real and personal property situate within the jurisdiction of this Honourable Court was assigned to the said C. D. and E. F., for the benefit of the creditors of the said D. B. of whom I am one;

Or, recovering damages for the breach within the jurisdiction of this Honourable Court of a contract to accept and pay for lumber;

Or, obtaining an injunction to restrain the defendants from transferring or otherwise parting with 100 shares of the Canadian Bank of Commerce.

2. [*If so, and where the proposed action is founded upon a contract or judgment,*] The said defendants have assets within the jurisdiction of this Honourable Court to the

84

Affidavit to
obtain leave to
serve writ out
of the juris-
diction.

amount of \$200 at least which would be liable for the satisfaction of my [or the said A. B.'s] claim aforesaid in case I [or the said A.B.] should recover judgment in the proposed action.

3. I am advised and believe that I [or the said A.B.] have [or has] a good cause of action against the said C.D. and E.F., in respect of the matters aforesaid.

4. The said defendants reside or may probably be found at in the of out of the jurisdiction of this Honourable Court and the said C.D. is a British subject, and the said E.F. is not a British subject.

Order for Service out of the Jurisdiction. (Rules 162, &c.)

85

Order for service out of the jurisdiction.
(a)

In the High Court of Justice.

Name of the Judge or Officer.] [Date.]

In Chambers,

Between Plaintiff,
and
Defendant.

1. Upon the application of , and upon reading the affidavit of filed, and upon hearing the Solicitor (or Counsel) for the plaintiff

2. It is ordered that the plaintiff be at liberty to issue a writ of summons for service out of the jurisdiction on the defendant who resides at

3. And it is further ordered that service of the said writ of summons and of this order upon the defendant at aforesaid, shall be good and sufficient service of the said writ upon the said defendant.

4. And it is further ordered that the time for appearance to the said writ be within days after the service thereof.

5. And it is further ordered that the costs of this application be

Con. Rules, 1888, Form 121.

(a) Con. Rules, 1897, Form 108.

(*Formal parts: as in No. 744.*)

1. I did on the day of 19 , serve the above named defendant, who is not a British subject, with a notice of the writ of summons in this action, which writ appeared to me to have been regularly issued out of the [Central Office of the High Court of Justice] against the above named defendant at the suit of the above named plaintiff, and was dated on the day of 19 , by delivering the said notice to and leaving the same with the said defendant personally at in [Cuba].

86
Affidavit of service of notice of writ on foreign subject out of Ontario.

2. At the time of the service of the said notice the said writ and the said notice appeared to be subscribed and indorsed in the manner and form prescribed by the Rules of the Supreme Court.

3. The said notice at the time of service thereof purported to be signed and was, as I am informed and verily believe, signed by of , the above named plaintiff (or by of , the Solicitor for the above named plaintiff).

4. A true copy of the said notice is now produced and shewn to me and marked "A."

5. I did afterwards, namely, on the day of 19 , indorse upon the said notice the year and the day of the month and week of the service of the said copy.

1. On the day of 19 , I duly served the above named defendant with a notice of the Writ of Summons in this action, a true copy of which notice is now produced and shewn to me and marked "A," by delivering the said notice to and leaving the same with the said defendant personally at in [Cuba].

87
Another form.

2. *The same as par. 5 in preceding form.*

SECTION VI.—SETTING ASIDE WRIT OF SUMMONS OR SERVICE THEREOF.

(*Formal parts: see No. 403.*)

On the part of the defendant *C.D.* that the writ of summons in this action and all subsequent proceedings therein, and also the conditional appearance to the said writ of summons entered by the said defendant may be set aside [if

88
Notice of motion to set aside writ of summons, etc.

others are the defendants, as against the said C. D.], on the ground that [specify grounds, e.g., the writ of summons was served out of the jurisdiction of this Honourable Court, indorsed with a claim which is not within any of the causes of action specified in Consolidated Rule 162; or the said writ of summons has no statement indorsed thereon of the nature of the claim made, or of the relief or remedy required in the action as required by the Consolidated Rules in that behalf; or the said writ has no claim indorsed thereon of the amount claimed by the plaintiff for debt or costs; or the said writ of summons has no address for service indorsed thereon; or the address for service indorsed on the said writ of summons is illusory or fictitious,] and that the plaintiff may be ordered to pay the said defendant's costs of entering a conditional appearance and of this application.

(*Formal parts: see No. 403.*)

89

Notice of motion to discharge order allowing service out of the jurisdiction and to set aside service.

On the part of the defendant *C.D.* that the order dated the day of , made in this action whereby service of the writ of summons (*or notice of the writ of summons*), in this action on the defendant *C.D.* at in the of , out of the jurisdiction of this Honourable Court was allowed, may be discharged; and that the service of the said writ (*or notice of the said writ*), and all subsequent proceedings in this action, (*if so, and the judgment entered herein*); and also the conditional appearance to the said writ of summons entered by the said defendant may be set aside [*if there are other defendants not moving, as against the defendant C.D.*], on the ground that the land [*or other property, describing it, which is the subject of the action*] which is the subject matter of this action is not, nor is any part thereof situate within the jurisdiction of this Honourable Court; *or the land [or other property as may be] affected by the deed [or will, or as may be], which is the subject matter of this action, is not nor is any part thereof, situate within the jurisdiction of this Honourable Court; or the contract which is sought to be enforced [or rescinded; or dissolved; or annulled; or for the breach whereof damages or other relief are or is demanded, or as may be], in this action was not made or entered into, nor has there been any breach thereof, within the jurisdiction of this Honourable Court; or the act [or thing] in respect whereof damages are sought to be secured in this action was not done within the jurisdiction of this Honourable Court; or the application for the said order*

was not supported by the evidence required by the Consolidated Rules of the Supreme Court, Rule 162; or that defendant *C.D.* had not at the time of the issue of the said writ of summons any assets whatever within the jurisdiction of this Honourable Court.

And that the plaintiff may be ordered to pay to the said defendant *C.D.* his costs of entering a conditional appearance and his costs of this application.

NOTE.—When the motion is merely to set aside the service of the writ this form must be modified accordingly.

(*Formal parts: see No. 744.*)

1. On the day of , 19 , I [or the above named defendant *C.D.*] was served at , in the State of , one of the United States of America [*or as may be*], out of the jurisdiction of this Honourable Court, with the paper writing now shewn to me and marked "A," which purports to be a copy of [*or a notice of*] a writ of summons issued out of this Honourable Court on the day of , 19 .

90

Affidavit in support of motion to set aside a writ and service, and order allowing same.

2. On the day of , 19 , a conditional appearance to the said writ of summons was duly entered on my behalf [*or on behalf of the said defendant C.D.*]

3. [*State facts relied on as a ground for setting aside the proceedings, sought to be set aside.*]

SECTION VII.—DISCLOSURE BY SOLICITORS OF THEIR AUTHORITY TO ACT, &C.

In the

[*Style of cause, see No. 35.*]

SIR,—

A writ of summons, dated the day of , A.D. 19 , has been issued against the above mentioned defendant in this action, and on said writ is indorsed a statement that the same was issued by you as the above mentioned plaintiff's solicitor; on behalf of the defendant I demand of you to declare to me in writing forthwith, whether such writ has been issued by you, or with your authority and privity.

Dated, &c.

Yours, &c.,

To Mr. A. B.

Defendant's Solicitor.

91

Demand on plaintiff's solicitor as to whether writ issued by his authority. (a)

(a) See Rule 143.

(*Formal parts, see No. 403.*)

92

Notice of motion to stay proceedings until reply.

For an order that all proceedings upon the writ of summons in this action may be stayed [*if there are other defendants, add as against the applicant*], until whose name is indorsed on the said writ as that of the solicitor issuing the same shall have declared to the applicant whether the said writ was so issued by him or with his privity.

(*Formal parts, see No. 744.*)

93

Affidavit in support.

1. On the day of , 19 , I (the above named defendant) was served with the document now produced and shewn to me and marked "A," which purports to be a copy of the writ of summons and indorsements thereon issued out of this Court on the day of , 19 .

2. On the day of , 19 , I served Mr. , whose name is indorsed on the said document as that of the solicitor issuing the said writ, with a demand in writing by (*or on behalf of*) the defendant, , requiring the said Mr. to declare forthwith whether such writ was issued by him or with his authority or privity, by delivering the said demand to him personally [*or by leaving the said demand with , a clerk in the office of the said Mr. , at mentioned the address for service on the said writ.*]

3. The said Mr. has not declared whether the said writ was or was not issued by him or with his authority or privity.

(*Style, &c., as in No. 91.*)

94

Declaration by solicitor that writ was so issued.

SIR,—
The writ of summons in this action was issued by me [*or with my authority or privity, as the case may be.*]

Dated, &c.

Yours, &c.,

To Mr.

Plaintiff's Solicitor.

(*Style, &c., as in No. 91.*)

SIR,—

The writ of summons herein was not issued by me, or with my authority or privity.

Dated, &c.

Yours, &c.,

A. B.

To Mr.

95

Declaration
that writ was
not so issued.

(*Formal parts, as in No. 403.*)

For an order that the plaintiff's solicitor, Mr. A. B., do declare in writing to the defendant's solicitor herein, within _____ days, the profession, occupation or quality, and place of abode of the plaintiff.

96
Notice of motion for an order that the plaintiff's solicitor declare the occupation and abode of the plaintiff.
(a)

(*Formal parts, as in No. 902.*)

That Mr. A. B., the plaintiff's solicitor, do within _____ days from this date declare in writing to the defendant's solicitor herein, the profession, occupation or quality, and place of abode of the plaintiff.

97
Order thereon.

(*Style, &c., as in No. 91.*)

The plaintiff herein is a _____, and his place of abode is _____ street, in the _____ of _____, in the County _____ of _____.

98
Declaration thereunder.

Dated this, &c.

Yours, &c.,

To Mr.

Defendant's Solicitor.

A. B.,

Plaintiff's Solicitor.

(*Formal parts: see No. 91.*)

Take notice that you are hereby required by [or on behalf of] the defendant C.D., to declare forthwith pursuant to the Consolidated Rule 144, the names and places of residence of all the persons constituting the firm of "A.B. & Co.," named as plaintiffs in the writ of summons in the action.

99
Demand of names of persons composing firm suing as plaintiffs. (b)

(a) See Rule 143 (2).

(b) Where a partnership is carrying on business in Ontario for trading, manufacturing, or mining purposes the names of the individuals composing the firm must be registered in the registry division in which the business is to be carried on. R. S. O. (1897) c. 152, s. 1.

(*Formal parts: see No. 91.*)

100

Reply to
above demand

Take notice that the names and places of residence of all the persons constituting the firm of "*A.B. & Co.*," named as plaintiffs in the writ of summons in this action are as follows: *D.A.*, whose place of residence is in the County of ; *W.B.*, whose place of residence is, &c.; and *F.L.*, whose place of residence is, &c.

(*Formal parts: see No. 403.*)

101

Notice of
motion to stay
proceedings
until demand
complied with

On the part of the defendants [*or defendant, C.D.*], that all proceedings in this action be stayed. [*If there are other defendants than the applicant, add, as against the defendant, C.D.*], until a statement of the names and places of residence of all the persons constituting the firm of "*A.B. & Co.*," named as plaintiffs in the writ of summons in this action shall have been furnished to the defendants [*or the defendant, C.D.*], or their [*or his*] solicitor, and that the plaintiffs may be ordered to pay to the applicants their [*or his*] costs of this motion.

(*Formal parts: see No. 744.*)

102

Affidavit in
support.

On the day of , 19 , I served Mr. , the solicitor for the plaintiffs in this action [*or I served the plaintiffs in this action*] with a true copy of the demand in writing by [*or on behalf of the above named defendants, or defendant C.D.*] requiring the said Mr. [*or the plaintiffs*] to declare forthwith pursuant to Consolidated Rule 144, the names and places of residence of all the persons constituting the firm of "*A. B. & Co.*," named as plaintiffs in the writ of summons in the action, which demand is now shewn to me and marked "*A.*," by [*Here state how the service was effected: see No. 93.*]

2. [*Shew that the demand has not been complied with, either by reason of no statement having been furnished, or because the statement furnished was insufficient or untrue.*]

(*Formal parts: see No. 403.*)

For an order directing the plaintiffs [*or defendants*] [within 4 days] do deliver to the applicant a statement in writing on oath of the names and addresses of the persons who were at the time of the accruing of the (alleged) cause of action herein co-partners in the above named firm of _____ & Co.]

103

Notice of
motion for
order for
names of part-
ners. (a)

Order for Names of Partners. (Rules 144, 222.)

In the High Court of Justice.

The Master in Chambers
(*or as may be*).

104

Order for
names of part-
ners. (b)

[*Date.*]

Between Plaintiff,
and
Defendant.

1. Upon the application of _____, and upon reading the affidavit of _____ filed, and upon hearing the Solicitor [*or Counsel*] for

2. It is ordered that the _____ furnish the _____ with a statement in writing, verified by affidavit, setting forth the names of the persons constituting the members or co-partners of their firm (c), and that the costs of this application be

See Con. Rules, 1888, Form 131.

(a) See Rules 144, 222.

(b) Con. Rules 1897, Form 113.

(c) Here may be added "at the time of the accruing of the cause of action herein," or "on the _____ day of _____ 19____," as may be required.

CHAPTER IV.

APPEARANCE.

Entry of Appearance. (Rule 169.)

[Title, &c.]

105

Appearance.
(a)

Enter an appearance for (*giving the names of all the defendants for whom appearance is to be entered*) in this action.

Dated the day of , 19 .

(Signed)

(Address)

The said defendant require (*or do not require, as the case may be*) a statement of claim to be delivered. (*In the case of a conditional appearance add, without prejudice to the right of the defendant to dispute the jurisdiction of the Court in this action or as the case may be.*)

(*In case the defendant wishes to dispute the amount claimed, and to make no other defence, the following may be added*), The defendant disputes the amount claimed by the plaintiff (*or the defendant insists that the amount due to the plaintiff is \$ only, or the defendant insists that the amount due to the plaintiff is, \$ for principal, and \$ for interest, since the day of &c., and no more*), as the case may be.

Con. Rules, 1888, Form 93.

Notice of Entry of Appearance. (Rule 175.)

106

Notice of appearance.
(b)

In the High Court of Justice.

Between

Plaintiff,

and

Defendant.

Take notice, that have this day entered an appearance at for the defendant to the writ of

(a) Con. Rules, 1897, Form 27.

(b) Con. Rules, 1897, Form 45. As to when it is necessary to give notice of appearance, see Rules 175 and 183.

summons in this action. ([Where the appearance is conditional or without prejudice to the defendant's right to dispute the jurisdiction of the Court, it should be so stated.]

The said defendant require [or do not require] delivery of a statement of claim.

Dated the day of 18 .

(Signed)

Solicitor for the defendant.

Con. Rules, 1888, Form 13.

[Title, &c., as in the writ.]

107

Enter an appearance in this action under protest for *C. D.*, who is sued as, but denies that he is, a partner, in the defendant firm of & Co. Appearance by partner under protest. (c)

Dated, &c.

(Signed)

(Address)

(Short style of cause: see No. 26.)

108

Take notice that I have on this day entered an appearance to the writ of summons in this action under protest for *C.D.*, a person who has been served with the said writ as a partner in the above named firm of Notice of appearance under protest. (c)

To the above named plaintiff and to his solicitor.

Dated, &c.

(Signed)

(Address)

(Formal parts: see No. 902.)

109

That the defendant *C.D.* be at liberty to enter a conditional appearance herein. Order to enter conditional appearance. (d)

110
Conditional
appearance. (a)

(Formal parts: see No. 105.)

Enter an appearance for *C.D.* in this action without prejudice to his right to move [against the regularity of the writ of proceedings in this action, *Or* to set aside the writ of summons, copy and service thereof, on the defendant *C.D.*, and all subsequent proceedings as against the defendant *C.D.*].

Dated,

(Signature of defendant in person,
or his solicitor.)

Entry of Appearance in action for Land limiting Defence.
(Rule 184).

111
Appearance in
action for
land, limiting
defence. (b)

[Title, &c.]

Enter an appearance for the defendant in this action. The said defendant limits his defence to part only of the property mentioned in the writ of summons, namely, to

Dated the day of , 19 .

(Signed)

(Address)

The said defendant require a statement
of claim to be delivered.

Con. Rules, 1888, Form 94.

112
Notice disput-
ing amount. (c)

Notice Disputing Amount. (Rule 176.)

In the High Court of Justice.

Between *A.B.*, Plaintiff,
and
C.D., Defendant.

Take notice, that the defendant disputes the amount claimed by the plaintiff [*or* the defendant insists that the amount due to the plaintiff is \$ only; *or* the defendant insists that the amount due to the plaintiff is \$ for principal and \$ for interest, since the day of , &c., and no more, as the case may be]

Dated, &c.

(Signed)

Solicitor for the defendant.

To

Con. Rules, 1888, Form 15.

(a) See *Frith v. De las Rivas*, 69 L. T. 383; *Moyer v. Claretie*, 7 T. L. R. 40; *Howland v. Insurance Co. of N. A.*, 16 P. R. 874.

(b) Con. Rules, 1897, Form 28. (c) Con. Rules, 1897, Form 46.

Notice Limiting Defence. (Rule 184.)

In the High Court of Justice.

113
Notice limiting defence. (d)

Between *A.B.*, Plaintiff,
and
C.D. and *E.F.*, Defendants.

The defendant, *C.D.*, limits his defence to part only of the property mentioned in the writ in this action, that is to say, [to the north-west quarter of the lot.]

Dated, &c.

Yours, &c.,

G.H.,

To

Solicitor for the said defendant, *C.D.*

Con. Rules, 1888, Form 14.

(Style of action as in the writ.)

Enter an appearance for *E.F.* as landlord of the above named defendant [where an order has been obtained under Rule 181, add, pursuant to the order herein dated the . day of , 19 .] **114** Appearance by landlord not named in the writ.

Add if necessary: The said *E.F.* limits his defence to part only of the property mentioned in the writ of summons, namely, to (*describing the part*).

Dated, &c. See Form No. 105.

Affidavit by Landlord. (Rule 180.)

In the High Court of Justice.

Between *A.B.*, Plaintiff,
and
C.D., Defendant.

115
Affidavit for appearance by landlord when not made a defendant. (e)

I, , of , make oath and say as follows:—

I am in possession of the land sought to be recovered in this action by myself [or by the said *C.D.*, my tenant (*as the case may be*)].

Sworn, &c.

Con. Rules, 1888, Form 47.

(d) Con. Rules, 1897; Form 47.

(e) Con. Rules, 1897; Form 18.

116*(Style of cause, No. 25 or 26.)*

Notice by
tenant to his
landlord of an
action brought
for recovery of
land.

I hereby notify you that I [or the above named defendant *C.D.*], was on the day of , served with a copy of the writ of summons in this action annexed hereto, for the recovery of possession of the messuage (*or as the case may be*) and premises now held by me [or by the said *C.D.*] as your tenant.

Dated, &c.

(Signed) C.D. or X.Y., solicitor for C.D.

To

118*(Formal parts, as in No. 403.)*

Notice of
motion for
leave to person
not named as
defendant to
appear. (a)

On the part of *A.B.*, that he may be at liberty to appear and defend this action [*if so*, as landlord of the above named defendant *C.D.* [as to being part of the property mentioned in the writ of summons.]

119

Affidavit in
support.

(Formal parts, as in No. 744.)

1. This action is brought to recover possession of the
2. I am in possession [of being part of the said premises] of the said premises [*if so*, by the above named defendant *C.D.* as my tenant.]

[3. *Where necessary*: On the 3rd day of June last, judgment was entered in this action by the above named plaintiff. I was not aware that this action had been brought for the recovery of the said premises until (*specify date and state any other circumstances explaining or excusing the delay in moving.*)]

120

Notice of
motion to set
aside an unau-
thorized
appearance.

(Formal parts, as in No. 403.)

On the part of the defendant *C.D.* that the appearance entered herein on behalf of the applicant may be set aside as irregular on the ground that Mr. , the solicitor who entered such appearance, acted without any authority from the applicant.

And that the said (*the solicitor*) may be ordered to pay the costs of this application between solicitor and client.

(a) See Rule 181.

(*Formal parts, as in No. 744.*)

121

1. I have not been served with a writ of summons in this action, nor have I given instructions for any appearance to be entered therein in my behalf. Affidavit in support.

2. On an appearance was entered on my behalf by , Solicitor [and the plaintiff has on the day of , 19 , delivered a statement of claim herein].

3. I have never retained the said Mr. either by myself or by my agent, or authorized him to act as my solicitor in this action, and the said appearance was entered by him in my behalf without any authority from me.

(*Formal parts, as in No. 744.*)

122

1. I did on the day of A.D. 19 , duly search in the book kept for entering appearances in the office of for the purpose of ascertaining if any appearance had been entered for the defendant in this action. Affidavit of non-appearance.

2. No appearance had then been entered for the defendant as appeared by the said book and I verily believe that the defendant has not appeared in this action.

CHAPTER V.

PLEADINGS.

SECTION 1.—FORM OF PLEADINGS GENERALLY.

Form of Statement of Claim.

123

General form
of statement
of claim. (a)

In the High Court of Justice.

Writ issued 3rd September, 19 .

Between A.B., Plaintiff,
and
E.F., Defendant.

Statement of Claim.

1. (*Set out concisely in convenient paragraphs a statement of the material facts relied upon*) (b).

2. The plaintiff claims \$

The plaintiff proposes that this action shall be tried at
Whitby.

Delivered the day of , 19 , by X.Y.,
Plaintiff's Solicitor.

Con. Rules, 1888, Form 53.

Notice in lieu of Statement of Claim. (Rule 245.)

24

Notice in lieu
of statement
of claim. (c)

In the High Court of Justice.

Writ issued the day of A.D.

Between A.B., Plaintiff,
and
C.D., Defendant.

Notice in lieu of Statement of Claim.

The particulars of the plaintiff's claim herein, and of the relief and remedy to which he claims to be entitled, appear by the indorsement upon the writ of summons.

(a) Con. Rules, 1897; Form 10.

(b) The practice is very general, and often useful, to begin a statement of claim by alleging the occupation of the plaintiff and defendant thus:—

1. The plaintiff is a hardware merchant doing business in the
Town of _____

2. The defendant is a farmer residing in the Township of _____

(c) Con. Rules, 1897; Form 48.

The plaintiff proposes that this action shall be tried at

Dated, &c.

X.Y., of No. Toronto Street, Toronto.

Solicitor for Plaintiff, or Plaintiff in person.

Con. Rules, 1888, Form 16.

Form of Statement of Defence.

In the High Court of Justice.

Between *E.F.*, Plaintiff,
and

G.H., Defendant.

Statement of Defence.

1. The defendant admits the allegations in the 1st and 2nd paragraphs of the plaintiff's statement of claim.

2. (*Set out concisely in convenient paragraphs a statement of the material facts relied upon.*)

Delivered the day of 19, by X.Y.,
of Defendant's Solicitor.

Con. Rules 1888, Form 57.

Form of Reply.

(*Title as in statement of claim, omitting date of issue of writ.*)

Reply.

1. (*If desired*) The plaintiff joins issue upon the defendant's statement of defence.

2. (*Where plaintiff does not introduce into his statement of claim, originally or by way of amendment, the allegations necessary by way of reply to the defence.*)

Set out concisely in convenient paragraphs the material facts relied upon in reply.

Delivered the day of 19, by X.Y.,
of Plaintiff's Solicitor.

Con. Rules, 1888, Form 62.

*Form of Defence and Counterclaim.***127**

General form
of defence and
counter-claim.
(a)

In the High Court of Justice.

Between A.B., Plaintiff,
and
C.D., Defendant.

Where a third person as well as the plaintiff is made a party to a counterclaim add a second style of cause, thus:

And between C.D., Plaintiff,
and
A.B. and E.F., Defendants.
(By counterclaim.)

Statement of Defence and Counterclaim.

The defence and counterclaim of the above named C.D.

1. *(Set out as in Form No. 125 the material facts relied on by way of defence.)*

2. By way of counterclaim the defendant says: *(Set out by reference to paragraphs of defence, or, as in the case of a statement of claim the material facts relied on by way of counterclaim.)*

The defendant claims *(as in a statement of claim,)*

Delivered the day of 19 , by X.Y., of
Defendant's Solicitor.

Con. Rules, 1888, Form 84.

128

General form
of reply and
defence to
counter-claim.
(b)

Reply to Defence and Counterclaim.

(Where plaintiff does not introduce into his statement of claim, originally or by amendment, the allegations necessary by way of reply to the defence and counterclaim:)

[Title as in Defence and Counterclaim (if any).]

Reply and Defence to Counterclaim.

1. *(Set out the material facts relied on by way of reply.)*
(A joinder of issue on the defence or paragraphs thereof may be added.)

Delivered the day of 19 , by X.Y.,
of Plaintiff's Solicitor.

Con. Rules, 1888, Form 85.

(a) Con. Rules, 1897; Form 13.

(b) Con. Rules, 1897; Form 14.

SECTION II.—ACCOUNT.

(Formal parts: see No. 123.)

1. Between the month of 19 , and the month of 19 , the plaintiff supplied the defendant with meat and vegetables and furnished from time to time accounts thereof to the defendant on account of which payments were from time to time made by the defendant [and in like manner the defendant supplied the plaintiff with coal and furnished accounts thereof.]

129

Claims on an account.

Account current.

Or, on the day of 19 , a balance in respect to such mutual dealings remained due to the plaintiff and an account was on that day rendered to the defendant shewing such balance;

Or, the plaintiff and the defendant during the years to had various dealings and transactions between them in regard to (*stating generally the nature of the dealings and transactions*), and on the day of 19 , arrived at a statement of account in regard to the said dealings and transactions upon which the sum of \$ was found to be due from the defendant to the plaintiff.

Account stated.

4. The said \$ remains unpaid (*or if so add*) except as to \$ paid on account thereof on the day of 19 .

(Formal parts: see No. 123).

1. Between the 1st of January and the 28th of February, 19 , the plaintiff supplied to the defendant various articles of drapery; and payments on account were from time to time made by the defendant.

130

Another form of claim on an account stated. (a)

2. On the 28th of February, 19 , a balance remained due to the plaintiff of \$325, and an account was on that day sent by the plaintiff to the defendant shewing that balance.

3. On the 1st of March following, defendant paid the plaintiff by cheque \$32 on account of the same. The residue of the said balance, amounting to \$293, has never been paid.

131

1. That an account may be taken of all sums of money received by, or come to the hands of, the defendant, as such agent of the plaintiff as aforesaid, for or on account, or for the use of the plaintiff, and of the application thereof; and of all dealings and transactions of the defendant, as the plain-

Claim by principal against agent for an account.

tiff's agent; and that the defendant may be ordered to pay to the plaintiff what, on taking such accounts, shall be found due from the defendant to the plaintiff; and to deliver up to the plaintiff all documents in the defendant's possession or power, belonging to the plaintiff.

2. That the defendant may pay the costs of this action.

3. Such further and other relief as the nature of the case may require and to this Honourable Court may seem meet.

132

Defence to
foregoing
claim.

(*Formal parts: see No. 125.*)

1. (*Admissions if any, &c.*)

2. The defendant denies the allegations contained in the paragraph of the statement of claim [and says that no statement of account has been arrived at between the plaintiff and defendant];

Or, 2. The defendant says that upon the statement of accounts referred to there was found to be \$ only due by the defendant to the plaintiff. [Any defence as to the sum so admitted should then be stated or payment into Court should be pleaded: see No. 317.]

Or, 2. The defendant says that about the day of 19 , the plaintiff and defendant attempted to arrive at a statement of account in regard to the dealings and transactions referred to in the statement of claim, and the defendant claimed, and now claims that the sum of \$ was and is due to him from the plaintiff, and the defendant by way of counterclaim claims to be paid the said sum of \$, or such other sum as may be found due to him upon taking of the accounts between the plaintiff and defendant.

And the defendant therefore claims:

1. To be paid the amount which may be due to him together with the costs.

2. That all proper directions be given, accounts taken, and proceedings had, for the purposes aforesaid.

3. Such other relief as the nature of the case may require.

133

Mode of plead-
ing settled ac-
counts.

The account so stated and settled was in fact stated and settled by the said plaintiff and defendant, as it purports to be, on the day of the date thereof; and the defendant claims the benefit thereof as a settled account.

SECTION III.—AGENCY.

(*Formal parts: see No. 123.*)

134

Claim by
agent against
principal.

1. During the year 19 , the plaintiff employed the defendant as his agent to sell certain goods (*indicating them in general terms*) for him upon the terms contained in a written agreement between the plaintiff and defendant dated 19 , [*or contained in a letter written by the defendant to the plaintiff dated 19 , and the plaintiff's reply thereto dated 19 , as the case may be*], pursuant to which the defendant was to render to the plaintiff monthly accounts of the goods forwarded to him and of the sales thereof and to be entitled to a commission to be credited to him monthly of per cent. upon such sales, and was to pay over to the plaintiff monthly the net proceeds arising from such sales.

2. The plaintiff accordingly supplied the defendant with goods to the value of \$ which, or the greater portion of which the defendant has sold and has received the proceeds thereof.

3. The defendant has not rendered accounts to the plaintiff pursuant to the said agreement though the plaintiff has frequently requested him to do so and to pay over to the plaintiff the net proceeds of the sales of such goods.

4. The defendant has rendered to the plaintiff but one account, viz., on the day of 19 , but the same was incorrect, and upon its face defective, and the defendant has not paid over to the plaintiff the proceeds of sales made by him nor any portion thereof.

The plaintiff therefore claims:

1. An account of the dealings and transactions of the defendant as such agent.

2. To be paid the amount which shall appear to be due to him and the costs of this action.

3. Delivery of any goods remaining in the hands of the defendant unsold.

4. That for the purposes aforesaid all necessary directions may be given, accounts taken, costs taxed, and proceedings had.

5. Such further and other relief as the nature of the case may require.

135

Claim by agent for commission or remuneration for service.

(*Formal parts, &c.: see No. 123.*)

1. During the year 19 , the plaintiff was employed by the defendant as his agent to obtain orders for (goods) manufactured or sold by the plaintiff; and it was agreed between the plaintiff and defendant that the defendant should be paid for his services a commission of per cent. upon the amount of sales effected through the plaintiff's instrumentality (or a salary of \$ per month and his expenses, or as the case may be).

2. The orders obtained by the plaintiff were notified by the defendant and accepted by him, and the sales made pursuant thereto of such goods through the plaintiff's instrumentality amounted to \$ [If so add:—The plaintiff has delivered to the defendant particulars of the plaintiff's expenses payable under the agreement aforesaid.]

3. The defendant has not paid the plaintiff his said commission [or salary and expenses, or has only paid to the plaintiff the sum of \$ on account of his said commissions or salary and expenses], and there remains due and payable to the plaintiff in respect of such commission [or salary and expenses] the sum of . (*Add claim for relief, which may be framed from Form No. 134.*)

136

Claim by house agent against principal.

(*Formal parts: see No. 123.*)

1. The defendant in the month of , 19 , employed the plaintiff (as his agent), to procure for the plaintiff a tenant for a house, of which the plaintiff was the owner, at a rent of not less than \$ per annum.

2. The defendant accepted such employment and succeeded in procuring a tenant for said house at a rent of \$ per annum.

3. No express agreement was made as to the remuneration to be paid to the plaintiff as such agent, but the customary and reasonable terms are that in such a case the agent shall receive [*as may be the case, e.g., 5 per cent. upon the amount of the rent payable for the first year by the tenant procured by the agent for the premises.*]

4. The commission payable to the plaintiff is therefore the sum of \$, which said sum has been demanded by the plaintiff from the defendant, but the defendant has not paid the same nor any portion thereof.

(*Add a claim for relief—may be framed from No. 134.*)

(*Formal parts: see No. 125.*)

The defendant did not procure any person to become tenant of the plaintiff's house in the statement of claim mentioned [the tenant therefor was obtained by the defendant himself (or was obtained through the instrumentality of another person), and not in any way through the instrumentality of the plaintiff.]

137

Defence to foregoing claim.

(*Formal parts: see No. 123.*)

1. In the month of _____, 19____, the defendant employed the plaintiff as a broker or agent to buy and sell grain (or as the case may be), on the Toronto market, for and according to the instructions of the defendant, at a commission of (as agreed).

138

Claim by agent for commission on sale

2. During the months of _____ and _____, 19____, the plaintiff as such agent bought and sold various quantities of grain pursuant to the instructions of the defendant, and accounts of the various transactions were from time to time furnished to the defendant by the plaintiff.

3. The said transactions, as shewn in such accounts, resulted on the whole in a loss, and there became due and payable to the plaintiff the sum of \$ _____ in respect of such loss and the plaintiff's commission aforesaid.

4. The plaintiff has demanded payment of the said sum of \$ _____, but the defendant has not paid the same.

(*Formal parts: see No. 123.*)

1. The plaintiff, about _____ months ago applied to the defendant to procure him to transact certain business, and for such purposes appointed the defendant his agent, such business being the obtaining of the patent from the Crown to lots numbers 224 and 225 (*describing them*), and the sale of lot number 220 in the said concession; and for the services of the defendant in respect of such business it was agreed between the plaintiff and the defendant that the latter should be entitled, out of the proceeds of the sale of lot number 220, to retain one-half, and should pay over the other half to the plaintiff.

139

Claim by principal against agent for an account, charging fraud.

2. Previously, and on or about the 13th day of October, in the year 19____, the plaintiff had paid to the Crown

the purchase money in full of the said two lots for which the patent was to be obtained, being the sum of \$433.

3. About a month ago, the plaintiff having been advised that the patent for the said two lots, 224 and 225, was in the hands of the defendant ready for him, and that the defendant had sold the said other lot, called on the defendant for the purpose of obtaining the patent and receiving the half of the purchase money of the lot sold, when the defendant handed the plaintiff the patent and ten dollars, which he alleged was the full amount of the purchase money of the lot sold.

4. The plaintiff was surprised on examining the patent to find that the consideration money therein expressed was only \$232, instead of the sum he expected to find it, and which he had paid the Crown Lands Department, namely, \$433.

5. The Government of the Province of Ontario have recently caused the Crown Lands in the said Township of to be revalued, and where the original price was manifestly too high, have reduced the same to what they considered right.

6. The defendant informed the plaintiff that even if the price had been so reduced it was very unlikely that the surplus, or any part of it could ever be got back from the Government; and having convinced the plaintiff that such was the case, induced him, in consideration of \$40, to assign to him the defendant, by a written instrument, all the right of the plaintiff thereto.

7. The plaintiff has recently learned that the said lots to which said patent relates, consisting of 116 acres, and originally sold for \$3 per acre, were in the manner aforesaid, under the said revaluation reduced to the price of \$2 per acre.

8. The plaintiff has further recently learned that nearly two months previous to the said assignment by the plaintiff to the defendant in the 6th paragraph mentioned, the defendant, as the plaintiff's agent, and for the plaintiff's benefit, had received from the Government the sum of \$206.20, being the reduction made as aforesaid, and that at the very time of such assignment the defendant held the said sum in his hands which he fraudulently concealed from the plaintiff.

9. And as to the said lot number 220, sold by the defendant for the plaintiff on the terms aforesaid, the plaintiff says that he has applied to the defendant to account for the

money received by him in respect thereof, but the defendant refuses to give any particulars whatever in respect thereof; and the plaintiff charges, as the fact is, that the defendant sold the said lot number 220 for a much larger sum than \$10, the amount for which he asserts he sold the same.

The plaintiff claims:

1. A declaration that the assignment mentioned in the 6th paragraph hereof is fraudulent and void, and the order of this Court that it be delivered up to be cancelled.

2. A declaration that the said sum of \$206.20 received by the defendant in manner aforesaid belongs to the plaintiff, and an order or direction that defendant pay the same, and whatever may be found due to the plaintiff in respect of the said lot number 220, to the plaintiff with interest.

3. A direction that for such purposes all proper directions may be given, accounts taken, and inquiries made.

4. The costs of this action.

5. Such further and other relief as the nature of the case may require, and to this Honourable Court may seem meet.

(*Formal parts: see No. 125.*)

1. All admissions herein made are so made for the purposes of this action only.

2. The defendant is a land agent and conveyancer, doing business as such in the Town of Durham, in the County of Grey.

3. The defendant first became acquainted with the plaintiff in the autumn of the year 19 , and shortly after the acquaintance began he plainly stated to the defendant that he (the plaintiff) was the holder of the interest of the purchaser or locatee of the Crown lot number 220, in the 3rd range south-west of the Toronto and Sydenham road, in the Township of Proton, in the County of Grey, under a tax sale, but that there were large arrears of taxes again accumulating thereon, and that there was a large sum due to the Crown in respect thereof, and he expressed his willingness to sell his interest in the said lot to the defendant.

140

Defence to
claim by principal
against
agent for
account, etc.,
charging
fraud.

4. The defendant was not desirous of becoming the purchaser of the plaintiff's interest in the said lot, but being pressed by the plaintiff to do so, the defendant became the purchaser thereof for the sum of \$25, and thereupon, by indenture of assignment duly executed by the plaintiff, he assigned and transferred to the defendant absolutely all his right, title and interest in and to the said lot in consideration of the sum of \$25, which the defendant then paid to him.

5. The defendant afterwards deposited the said assignment in the Department of Crown Lands for the Province, and paid to the said Department the amount required in order to entitle him to the issue of the patent therefor, and some time afterwards the patent for the said lot was issued to the defendant's assignee by the said Department.

6. The defendant satisfied all the arrears of taxes which had accrued upon the said lot.

7. The defendant denies that he ever agreed with the plaintiff to sell the said lot for him, and divide the proceeds of the said sale with him, or that he ever agreed with the plaintiff in respect of the said lot except as hereinbefore set forth; and the defendant insists upon the said sale and assignment by the plaintiff to defendant of his interest in the said lot, and pleads the same in bar to the relief sought by him in respect thereof.

8. The plaintiff engaged the defendant in his capacity of a land agent to assist him in procuring the issue to him of a patent from the Crown of lots numbers 224 and 225 in the 3rd range south of the Toronto and Sydenham road, in the said Township of Proton, and the defendant undertook, as he submits he was justified in doing, to aid the plaintiff in procuring the issue of the said patent.

9. At the time the plaintiff so applied to the defendant, he informed the defendant that he derived his title to the issue of the said patent through a purchase at a tax sale of the interest of the original locatee of the Crown; that the Department of Crown Lands had hitherto declined to act upon the said title; that he feared other persons might apply to the said Department to purchase the said lots, and that he was very anxious to procure the issue of a patent to himself.

10. In order to prevent any other application for the said lots, the plaintiff, under the defendant's advice, applied to the local Crown Lands Agent of the County of Grey for,

and procured from him a statement shewing the amount required to be paid in order to entitle the plaintiff to the issue of a patent for the said lots, and upon receipt of the said statement the plaintiff deposited the amount shewn thereby to the credit of the said Department; the required amount shewn by the said statement was \$433, and was made up by putting the price of the said lands at \$3 per acre, and computing interest on the said price from the date of the application of the original purchaser, and giving credit for the deposit paid to the Department by the said original purchaser.

11. At the time the plaintiff deposited the sum of \$433 as aforesaid, the defendant informed him that he thought the said Department could be induced to accept \$2 per acre for the said lands, and the defendant agreed to use his best endeavours with the said Department to procure it to sell the said lands to the plaintiff for the said sum of \$2 per acre; but the plaintiff said he would be perfectly satisfied if he got the said lots for the said sum of \$433, and that any rebate which the defendant could get upon the price of the said lands he might keep for himself; and sometime afterwards the plaintiff executed and delivered to the defendant a power of attorney, authorizing him to receive from the said Department all overplus moneys paid by him to the said Department on account of the said lots.

12. In pursuance of the defendant's said engagement with the plaintiff, he corresponded with the said plaintiff and with the defendant's agents at Toronto, and made two journeys to Toronto in and about the procuring of the issue of the said patent to the plaintiff, and by the defendant's exertions and those of his agents he was enabled to procure the issue of a patent to the plaintiff for the said lots, and he also procured the said Department to make a rebate upon the price of the said lands amounting to the sum of \$206.20, which was paid to the defendant by the said Department, and he received the same under the authority of the said power of attorney.

13. The said patent was issued on or about the 1st day of December, 19 , and immediately after the defendant received the same he wrote to the plaintiff informing him of the issue thereof, and that he had received the said sum of \$206.20, and requesting him to call upon the defendant and receive his said patent and have a settlement; but the plaintiff never called upon the defendant nor asked him for the said patent, nor for a settlement in respect of the said moneys until the month of March, 19 .

14. In the said month of March the plaintiff called upon the defendant, and the defendant then fully explained to him what had been done as hereinbefore set forth, and the plaintiff fully understood the same.

15. The defendant then paid to the plaintiff the sum of \$140 out of the said sum of \$206.20 received by the defendant from the said Department, proposing to retain the balance as a remuneration for his services, loss of time and disbursements in and about the procuring of the issue of the said patent and the said rebate from the said Department. The plaintiff assented to the said settlement; and in order to evidence the said settlement, and in order to ratify and confirm the power of attorney formerly given to the defendant, the plaintiff, by an instrument under his hand and seal dated the 30th day of March, 19 , in consideration of the said sum of \$140, authorized the defendant to obtain any refund that was then or had been due from the said Department on account of the said lots, and also to keep and use for ever all moneys which he had obtained or might obtain on account of said lots, as overpaid money from the said Department.

16. The defendant has not obtained and does not expect to obtain any further sums of money from the said Department on account of the said lots.

17. After the execution of the said instrument, and on the same day, the plaintiff represented that he was much in need of money, and asked the defendant to reduce his said charges, which the defendant agreed to do, and thereupon he gave to the plaintiff the further sum of \$10, and the plaintiff gave the defendant a receipt therefor expressed to be in full of all demands.

18. At the time of the said settlement, and the payment by the defendant to the plaintiff of the said sums of \$140 and \$10, he fully understood the nature of the said settlement, and he was fully and fairly informed of the nature and particulars of the whole transaction, and he agreed thereto and executed the said instrument under seal and the said receipt deliberately, and with full knowledge of all the circumstances, and without the exercise of any improper influence on the defendant's part; and the defendant claims that the said settlement was a fair and just one, and that the amount retained by the defendant as a remuneration for his said services, loss of time and disbursements, was very reasonable under the circumstances, and the defendant submits that

the plaintiff is bound by the said settlement, and ought not to be allowed to re-open the same.

19. The plaintiff has, by his laches and acquiescence, deprived himself of all right to relief in this court in respect of the matters aforesaid.

20. The defendant denies all charges of fraud and improper conduct on his part.

SECTION IV.—AGREEMENTS.

(*Formal parts: see No. 123.*)

1. By an agreement in writing [*if so, add under seal*],¹⁴¹ Statement of claim on agreement.
dated the day of , 19 , [*or by an indenture*
dated day of 19 , made between the plaintiff
and defendant] it was agreed between the plaintiff and
defendant; *or on the day of , 19 ,*
it was orally agreed between the plaintiff and defendant,
&c., setting out the terms of the agreement or covenant, the
breach of which is complained of. In doing so the considera-
tion to the defendant should be shewn where the agreement
is not under seal, and a statement should be made of any facts
necessary to shew the plaintiff's right to what he claims pur-
suant to the agreement. Then should follow allegations of
the breach in the terms of the agreement and of the damage
accrued in separate paragraphs, and a claim for the relief
required].

A denial of, or omission to admit, the paragraphs of the Defences to
statement of claim alleging the agreement, breaches, &c., will foregoing
operate as a denial of the making of the agreement, breach, claim.
&c. (a).

Express denials may be as follows:

The defendant did not contract [*promise or agree*], or did not enter into the agreement as alleged in the statement of claim;

Or, the defendant denies that he ever made the deed alleged in the statement of claim.

(a) See Rules 272 and 282.

The defendant did not (*inserting the breaches denied*)

Or the defendant's version of the agreement may be pleaded thus:

The defendant never agreed as alleged in the statement of claim. The agreement between the plaintiff and defendant [*or the deed or bond made by the defendant*] was [*in writing dated the day of , 19 , and was*] as follows: (*setting out or stating the material parts and adding allegations of performance, satisfaction or discharge, of the agreement so stated.*)

SECTION V.—ALIMONY.

(*Formal parts: see No. 123.*)

142

Claim for alimony.

2. The plaintiff was married to the defendant in the month of December, A.D. 19 , and they shortly after their marriage took up their residence on a farm in the said Township of , where they have till lately continued to reside as man and wife.

3. In a very short time after their said marriage, the defendant began to exhibit a very bad temper, and disposition towards the plaintiff, and continued to do so, until she was compelled to leave him as hereafter stated.

4. The defendant during all this time was in the habit of using intoxicating drinks and was frequently so much under their influence as to become very abusive in his language to the plaintiff, and this occurred so often that her life with him, during all the period above mentioned, was, from this cause alone, one of constant unpleasantness and apprehension—quite irrespective of the personal violence used by him towards her, hereafter particularly mentioned.

5. During this period the defendant has frequently struck the plaintiff, and has pulled her violently by the hair and otherwise assaulted her in so gross a manner as to compel her on several occasions to escape from him either by locking herself in a room, or by leaving the house and hiding in the adjoining premises.

6. The low, scurrilous abuse which the defendant has, during the sixteen years of their married life, heaped on the plaintiff, interspersed with the personal violence he has used towards her, the plaintiff has (until recently) borne with—

being unwilling to expose these unhappy private relations to the public, and hoping that time would produce a favourable change; but her forbearance has brought no improvement in the conduct of the defendant towards her.

7. Among the numerous instances of gross personal violence inflicted on the plaintiff by the defendant, she avers that, about five years ago the defendant violently expelled her from his house, and about three years ago his abuse and threats of violence to her were so great that she in fear of her life locked herself in her room in order to be secure against his approach. On New Year's day, A.D. 19 , the defendant choked the plaintiff. In the fall of the year 19 , he caught her by the hair and brutally dragged her around the cellar of his house, causing her such apprehensions for her life that she barred herself in a room to prevent the infliction of further violence. In the month of March, 19 , he so violently struck and bruised her, that she feared he would take her life, and on the 25th of May last, he threw at her and broke upon her head and face a number of eggs; and choked her by the throat until she feared he would strangle her (a).

8. During all this period the plaintiff discharged all the duties of a wife to the defendant, and she has by her personal exertions contributed in a great degree to the accumulation of the property which he now owns, consisting of a good and well-stocked farm with comfortable house and out-buildings being lot No. —, in the First Concession of the said Township of ———, worth about \$4,000, and money out at interest and other personalty worth about \$6,000 more.

9. The plaintiff, in consequence solely of the constant abusive and violent conduct of the defendant as above detailed, and from the apprehension that her life is at no moment safe while living with the defendant, left his house and premises on the 7th day of June, A.D. 19 .

10. The plaintiff has no means of living excepting by her daily labour, and unless relief be afforded by this Honourable Court, she will be reduced to great distress.

1. The plaintiff claims alimony from the defendant [if so, and also interim alimony] sufficient under the circumstances; and that the defendant may be ordered

(a) The several acts of violence or other misconduct of defendant intended to be proved at the hearing, must be specifically set forth in the statement of claim with specific allegations as to times and places; a slight variance, however, between a date alleged and proved, would not be fatal to plaintiff's right to prove the act complained of: *Rodman v. Rodman*, 20 Gr. 429.

to pay the same to her, and that he may be ordered to pay the costs of this action.

2. Such further and other relief in the premises as the circumstances of the case may require; and that for that purpose all necessary directions may be given and accounts taken (a).

SECTION VI.—ASSAULT.

(*Formal parts: see No. 123.*)

143
Claim for
assault.

3. On the day of the defendant assaulted the plaintiff and the plaintiff was seriously hurt and wounded, and was for a long time in consequence of his injuries, unable to transact his business, and incurred expense for nursing and medical attendance.

4. [*(Amendment to meet defence infra.)* The defendant pretends that he committed the assault complained of in his own defence; but the facts are that the defendant was trespassing on the plaintiff's land, and refused to leave though requested to do so, whereupon the plaintiff laid his hands on the defendant in order to remove him, using so much force as was necessary for that purpose and no more.]

The plaintiff claims \$ damages and the costs of this action.

144
Defence to
foregoing
claim.

(*Formal parts: see No. 125.*)

The plaintiff first assaulted the defendant, who thereupon committed the alleged assault in his own defence.

145
Reply. (b)

(*Formal parts: see No. 126.*)

The defendant *E.F.*, pretends that he committed the assault complained of in his own defence; but the facts are that the defendant was trespassing on the plaintiff's land and refused to leave though requested to do so, whereupon the plaintiff laid his hands on the defendant in order to remove him, using so much force as was necessary for that purpose and no more.

(a) For notice of claim for interim alimony to be indorsed on the writ of summons, see No. 64.

(b) To be used where plaintiff does not introduce into his statement of claim the allegations necessary by way of reply to the defence.

SECTION VII.—ASSIGNMENT.

(Formal parts: see No. 123.)

The cause of action upon the debt or chose in action between the assignor and the defendant should be stated, with an allegation of the assignment, as follows:

146

Allegation of assignment of a debt or chose in action.

1. The said A.B. (the assignor) on the day of , 19 , by writing under his hand assigned to the plaintiff absolutely (and not by way of charge only), [the said sum of \$ so due and payable as aforesaid, or the said sum of \$ then due and payable as aforesaid; and also all other sums which should thereafter become due to him from the defendant under the said agreement, or all his right, title and interest, in or under the said agreement, and all the benefit or advantage to arise therefrom, as the case may require].

2. Express notice in writing of the said assignment was given to the defendant on or about the day of , 19 .

SECTION VIII.—BILLS OF EXCHANGE, CHEQUES AND PROMISSORY NOTES.

(Formal parts: see No. 123.)

1. The plaintiff by a bill of exchange, drawn by him bearing date the day of , 19 , now overdue, directed the defendant to pay to the plaintiff months after date [or sight] the sum of \$, and defendant accepted the said bill.

147

Claim by drawer against acceptor. (c)

2. The said bill became due on the day of , 19 , but the defendant has not paid it.

3. The plaintiff incurred expenses to the amount of \$, in and about the presenting of the said bill and the protesting of the same for non-payment.

The plaintiff claims \$, and damages for non-payment of the said bill and the costs of this action.

[4. The defendant, who at the time of the acceptance of the said bill was an infant within the age of 21 years, ratified and confirmed the said acceptance after he attained full age and before action, by a writing made and signed by him.]

148

Amendment of claim to meet defence of infancy of acceptor. (c) (d)

Or this answer to the defence may be set up by reply.

(*Formal parts: see No. 123.*)

149

Claim on bill
of exchange
and consider-
ation. (a)

1. The plaintiffs are _____ merchants, factors, and commission agents, carrying on business in Toronto.

2. The defendants are merchants and commission agents, carrying on business at Montreal.

3. For several years prior to the _____, 19____, the plaintiffs had been in the habit of consigning goods to the defendants for sale, as their agents, and the defendants had been in the habit of consigning goods to the plaintiffs for sale, as their agents, and each party always received the price of the goods sold by him for the other; and a balance was from time to time struck between the parties, and paid.

4. On the _____ of _____, 19____, the moneys so received by the defendants for the plaintiffs, and remaining in their names, largely exceeded the moneys received by the plaintiffs for the defendants, and a balance of \$ _____ was accordingly due to the plaintiffs from the defendants.

5. On or about the _____, 19____, the plaintiffs sent to the defendants a statement of the accounts between them, shewing the said sum as the balance due to the plaintiffs from the defendants; and the defendants agreed to the said statement of accounts as correct, and to the said sum of \$ _____, as the balance due by them to the plaintiffs, and agreed to pay interest on such balance if time were given to them.

6. The defendants requested the plaintiffs to give them three months' time for payment of the said sum of \$ _____, and the plaintiffs agreed to do so upon the defendants accepting the bills of exchange hereinafter mentioned.

7. The plaintiffs thereupon on the _____ drew two bills of exchange upon the defendants, one for \$ _____, and the other for \$ _____, both payable to the order of the plaintiffs three months after date, and the defendants accepted the bills.

8. The said bills became due on the _____ 19____, and the defendants have not paid the bills, or either of them, nor the said sum of \$ _____.

The plaintiffs claim \$ _____, and interest to the date of judgment and the costs of this action.

(*Formal parts: see No. 123.*)

1. *A.B.*, by a bill of exchange drawn by him bearing date the day of , 19 , now overdue, directed the defendant to pay to the said *A.B.* or order months after date the sum of \$. **150**
Claim by indorsee against acceptor.

2. The defendant accepted the said bill.

3. The said *A.B.* indorsed the said bill to the plaintiff who is now the holder thereof.

4. The said bill became due on the day of 19 , but defendant has not paid the same.

The plaintiff claims \$ and costs.

(*Formal parts: see No. 123.*)

1. The defendant by a bill of exchange drawn by him bearing date the day of , 19 , directed to *A.B.*, required the said *A.B.* to pay to the plaintiff [*or to C.D. or order*], months after date the sum of \$. **151**
Claim by payee against drawer, or by indorsee against drawer or an indorser

2. (*Where plaintiff is indorsee.*) The said *C.D.* indorsed the said bill to the plaintiff.

3. (*In the case of non-acceptance.*) The said bill was duly presented for acceptance to the said *A.B.*, but the said *A.B.* refused to accept and has not accepted the same.

4. (*In the case of non-acceptance.*) Due notice of the said presentment and dishonour was sent to the defendant.

Or (In the case of non-payment.) 3. The said bill was duly presented for payment, but the same was dishonoured.

(*Or in the case of non-payment where notice is necessary.*)

4. Notice of the dishonouring of said bill was duly given to the defendant.

5. (*In either case.*) The defendant has not paid the said bill.

The plaintiff claims \$ and his costs of action.

(*Formal parts: see No. 123.*)

1. Messrs. *M. N. & Co.*, on the day of , drew a bill of exchange upon the defendants for \$ payable to the order of the said Messrs. *M. N. & Co.* three months after date, and the defendants accepted the same. **152**
Claim by indorsees against acceptor. (b)

2. Messrs. *M. N. & Co.* indorsed the bill to the plaintiffs.

[3. (*Introduced by amendment to meet the defence in the defendant's statement of defence infra.*) The plaintiff gave value and consideration for the said bill in manner following, that is to say: on the day of , 19 , the said Messrs. *M. N. & Co.* were indebted to the plaintiff in about \$ the balance of an account for goods sold from time to time by him to them. On that day they ordered of the plaintiff further goods to the value of about \$ which last mentioned goods have since been delivered by him to them. And at the time of the order for such last mentioned goods it was agreed between Messrs. *M. N. & Co.* and the plaintiff, and the order was received upon the terms, that they should indorse and hand over to him the bill of exchange sued upon, together with various other securities on account of the said previous balance, and the price of the goods so ordered on that day. The said securities, including the bill sued upon, were thereupon on the same day indorsed and handed over to the plaintiff.]

4. The bill became due on the , and the defendant has not paid it.

The plaintiffs claim \$, the amount of said bill and the damages for non-payment thereof and the costs of this action.

(*Formal parts: see No. 125.*)

153
Defence to
preceding
claim. (a)

1. The bill of exchange mentioned in the statement of claim was drawn and accepted under the circumstances herein-after stated, and except as hereinafter mentioned there never was any consideration for the acceptance or payment thereof by the defendants.

2. Shortly before the acceptance of the said bill it was agreed between the said Messrs. *M. N. & Co.*, the drawers thereof, and the defendants, that the said Messrs. *M. N. & Co.* should sell and deliver to the defendants free on board ship at the port of 1,200 tons of coal during the month of , and that the defendants should pay for the same by accepting the said Messrs. *M. N. & Co.*'s draft for \$ at 6 months.

3. The said Messrs. *M. N. & Co.* accordingly drew upon the defendants, and the defendants accepted the bill of exchange now sued upon.

4. The defendants did all things which were necessary to entitle them to delivery by the said Messrs. *M. N. & Co.* of the said 1,200 tons of coals under their said contract, and the time for delivery has long since elapsed; but the said Messrs. *M. N. & Co.*, never delivered the same, or any part thereof, but have always refused to do so, whereby the consideration for the defendant's acceptance has wholly failed.

5. The plaintiffs first received the said bill, and it was first indorsed to them after it was overdue.

6. The plaintiffs never gave any value or consideration for the said bill.

7. The plaintiffs took the said bill with notice of the facts stated in the 2nd, 3rd and 4th paragraphs hereof.

(*Formal parts: see No. 126.*)

154
Reply. (b)

1. The plaintiff joins issue upon the defendant's statement of defence.

2. The plaintiff gave value and consideration for the said bill in manner following, that is to say, on the day of , 19 , the said Messrs. *M. N. & Co.* were indebted to the plaintiff in about \$, the balance of an account for goods sold from time to time by him to them. On that day they ordered of the plaintiff further goods to the value of about \$, which last mentioned goods have since been delivered by him to them. At the time of the order for such last mentioned goods it was agreed between Messrs. *M. N. & Co.* and the plaintiff, and the order was received upon the terms, that they should indorse and hand over to him the bill of exchange sued upon, together with various other securities on account of the said previous balance, and the price of the goods so ordered on that day. The said securities including the bill sued upon, were thereupon on the same day indorsed and handed over to the plaintiff.

(*Formal parts: see No. 123.*)

155
Claim by
payee of a
cheque against
the drawer.

1. The defendant by his cheque, or order for payment of money, dated the day of , 19 , directed

(b) Where plaintiff does not introduce into his statement of claim by amendment the allegations necessary by way of reply to the defence. See *Con. Rules*, 1888, Form 62.

to the Bank, required the said Bank to pay to the plaintiff or bearer the sum of \$

2. The said cheque was duly presented for payment on the day of , 19 , but was dishonoured.

3. Notice of the said presentment and dishonour was duly given to the defendant.

4. The defendant has not paid the said cheque.

The plaintiff claims \$, and his costs of action.

(Formal parts: see No. 123.)

156

Claim by holder of a crossed cheque against the drawer.

1. On the day of , 19 , the defendant by a cheque (a) drawn by him on the Bank, directed the said Bank to pay to [A.B. or bearer] the sum of \$

2. The said cheque before presentation for payment was crossed with the name of the Bank [or with two parallel transverse lines simply, or as the case may be] and the plaintiff became the bearer of said cheque.

3. The said cheque was duly presented by the Bank (the Bank named, or other Bank, as the case may be) for payment, but the said cheque was dishonoured.

4. Notice of such presentment and dishonour was duly given to the defendant.

5. The said cheque has not been paid.

The plaintiff claims \$ and his costs of action.

(Formal parts: see No. 123.)

157

Claim on a promissory note by payee or indorsee.

1. The defendant [or X.Y.] on the day of , made his promissory note now overdue, whereby he promised to pay to the plaintiff [or to A.B.] or his order \$ three months after date [or on demand or as the case may be].

2. The said note became due on the day of 19 , (this clause is not needed where the note is payable on demand.)

3. (Where claim is by indorsee.) The defendant [or the said X.Y., or the said A.B.] indorsed the said note to the

(a) Or "an order for payment of money."

plaintiff [*or to C.D. who indorsed the same to the plaintiff, as the case may be*].

4. (*Where claim is by indorsee against indorser*). The said note was duly presented for payment but was dishonoured.

5. (*Where claim is by indorsee against indorser*). Notice of the said presentment and dishonour was duly given to the defendant.

6. The defendant has not paid the said note. The plaintiff claims \$ and his costs of action.

(*Formal parts: see No. 123.*)

1. On the day of 19 , the defendant drew **158** Claim by accommodation
on the plaintiff a bill of exchange for \$ payable to the acceptor of a
order of A.B., one month after date. bill for reimbursement or
indemnity

2. The plaintiff at the request and for the accommodation of the defendant, and without receiving any consideration for so doing accepted the said bill.

3. The plaintiff was afterwards compelled to pay the amount of the said bill.

The plaintiff claims:

(1) To be repaid the sum of \$ so paid by him and his costs of action.

(2) Such further and other relief as the nature of the case may require.

(*Formal parts: see No. 125.*)

Defences to preceding claims.

Any particular material allegation where it is a defence may be specifically denied thus: The defendant did not make, draw, accept *or* indorse the bill [*or note*]; *or* the bill [*or note*] was not presented for acceptance [*or for payment*]. **158a** Denials of
The defendant had not due notice of dishonour, &c. plaintiff's case

The denial of particular paragraphs of the statement of claim will serve the same purpose.

159

Not the holder

The following are forms of other defences.

The plaintiff was not the holder of the [bill or note] at the commencement of the action.

160

Accommodation bill.

The bill was accepted for the accommodation of the plaintiff without consideration [or was accepted for the accommodation of (*the drawer*) and indorsed to the plaintiff without consideration].

161

Misrepresentation, (a)

1. The defendant made the note sued upon under the following circumstances:—The plaintiff and defendant had for some years been in partnership as coal merchants, and it had been agreed between them that they should dissolve partnership, that the plaintiff should retire from the business, that the defendant should take over the whole of the partnership assets and liabilities, and should pay the plaintiff the value of his share in the assets after deducting the liabilities.

2. The plaintiff thereupon undertook to examine the partnership books, and inquire into the state of the partnership assets and liabilities; and he did accordingly examine the books, and make the said inquiries, and he thereupon represented to the defendant that the assets of the firm exceeded \$10,000, and that the liabilities of the firm were under \$3,000, whereas the fact was that the assets of the firm were less than \$5,000, and the liabilities of the firm largely exceeded the assets.

3. The misrepresentations mentioned in the last paragraph induced the defendant to make the note now sued on, and there never was any other consideration for the making of the note.

162

Failure of consideration.

The defendant accepted the bill for and on account of the price of 50 tons of coal to be delivered by the plaintiff to the defendant by the 1st May, 19 , and the plaintiff failed to deliver the said coal [or, *where so*, and the bill was indorsed by A.B. (*the payee*) to the plaintiffs without consideration or with notice of the above facts, or when overdue.]

163

Acceptance induced by fraud.

1. The defendant was induced to accept the said bill by the fraud of (*the drawer*) who (*setting out the particulars of the fraud.*)

2. The said (*drawer*) indorsed the said bill to the plaintiff without consideration [or with notice of the fraud or when overdue.]

Or, the bill was accepted and delivered to the said (*the drawer*) without consideration for the purpose of his getting it discounted for the defendant and the said (*drawer*) in fraud of the defendant indorsed the said bill to the plaintiff without consideration [*or with notice of the said fraud, or when overdue.*]

164Infancy. (*b*)

The defendant says that at the time of making the alleged acceptance of the said bill the defendant was an infant within the age of 21 years.

165

Alteration of bill, etc.

The defendant says that said bill [*or note*] was after its issue materially altered without the consent of the defendant, viz., by the alteration of its date from the 30th day of June to the 3rd day of June [*or by the time of payment being altered from 3 months after date to one month after date.*]

166

Illegal, or no consideration

1. The defendant says that before he signed the said promissory note he had had a bet or wager with the plaintiff [*or payee*] upon the result of the Jockey Club Races and the defendant lost the said bet or wager.

2. The defendant at the plaintiff's (*or payee's*) request signed and delivered to the plaintiff (*or payee*) the said note in payment of part of the amount of said bet or wager, and the same was the only consideration for said note.

(*If the action is by an indorsee.*) 3. The said (*payee*) indorsed the said note to the plaintiff without consideration [*or with notice of the above facts, or when overdue.*]

167

Statute of Limitations.

The defendant (further) says that the plaintiff's right of action, if any, accrued more than 6 years before the commencement of this action.

168

Defendant only a surety and discharged.

The said note was made by the defendant jointly with A.B., and for the accommodation only of said A.B., and as his surety to secure a debt of \$ due to the plaintiff by said A.B., of which facts the plaintiff had notice at the time, and except as aforesaid there was no consideration for the making of the said note by the defendant, and after the said note became due the plaintiff, whilst the holder thereof released the defendant by giving time to the said A.B. in pursuance of a binding agreement in that behalf made without the defendant's consent.

169

Loss of bill.

1. After the acceptance of the said bill, the plaintiff while he was the holder thereof lost the bill [*if not appearing in the statement of claim or elsewhere in the defence, which was payable to bearer, or order, and transferable by indorsement as the case may be*], and the same has ever since been and still is lost.

2. The defendant submits that the plaintiff is not entitled to recover in this action unless he first gives to the defendant indemnity against the claims of any other persons in respect of the said bill.

170

Bond of indemnity under an order not to set up the defence of a bill of exchange being lost. (a)

Know all men, &c. (*see Form 1161*).

Whereas an action is now pending in the High Court of Justice for Ontario, wherein the above bounden (A.B.) is plaintiff and the above named (*obligee*) is defendant, brought for the recovery of the amount of bill of exchange [*or a promissory note*] for \$.

And whereas the said bill [*or note*] is alleged by the said (*defendant*) to be lost, and by an order made in the said action on the day of 19 , it was ordered that the loss of the said bill [*or note*] should not be set up as a defence in the said action on the said (A.B.) giving an indemnity to the satisfaction of (*according to the order*).

Now the condition of the above written obligation is such that if the above bounden A.B., &c., (*obligor and sureties*) or some or one of them, or their, or some one of their heirs, executors or administrators do and shall save harmless and keep indemnified the said (*obligee*), his executors, administrators and assigns, and his and their lands and tenements, goods and chattels, of, from, and against all claims and demands of any other person or persons whomsoever, save and except the said A.B., his executors or administrators, claiming payment of any sum or sums of money upon or in respect of the said bill of exchange [*or promissory note*] and also from all actions, suits and other proceedings whatsoever which at any time or times shall or may be brought or prosecuted against the said (*obligee*), his heirs, executors or administrators, upon the said bill [*or note*], and also from all costs, damages and expenses which he or they may bear or incur for or by reason

(a) See 53 V. c. 33, s. 69 (D).

of any such claim as aforesaid being made upon the said bill [*or note*], then this obligation to be void, otherwise to remain in full force and virtue.

Signed, sealed and delivered
in the presence of

SECTION IX.—BONDS.

(*Formal parts: see No. 123.*)

1. By a bond dated the day of 19 , the 171
defendant became bound to the plaintiff in the sum of \$ Claim on bond
subject to the condition that if [*stating the condition for ex-*
ample that if the defendant should pay the plaintiff \$.
quarterly on the 1st days of February, May, August and
November, in every year during the life of the plaintiff.

Or, that if one A.B. therein mentioned should well and
faithfully discharge the duties of clerk to the plaintiff and at
all times account for and pay over unto the plaintiff all
moneys or securities for money which he should receive for
or on behalf of the plaintiff.

Or, that if the defendant should indemnify and save
harmless the plaintiff from all loss and damage by reason
of the plaintiff's defending a certain action in the High
Court of Justice brought in the month of 19 , by one
G.H. against the plaintiff to recover \$ then in the hands
of the plaintiff which was claimed by the defendant] then the
said bond should be void.

2. *Assign the breach complained of for example:—*The
defendant failed to pay to the plaintiff the quarterly payments
under said bond falling due on the 1st days of May, August,
and November, 19 .

[*Or*, the said A.B. did not account for and pay over unto
the plaintiff all moneys or securities for money which he re-
ceived for or on account of the plaintiff but appropriated to
his own use the sum of \$.

Or, the defendant has not indemnified and saved harm-
less the plaintiff from all loss and damage by reason of his
defending the said action whereby the plaintiff has been ob-
liged to pay and has paid the sum of \$ for the costs of the
said G.H. of said action and a further sum of \$ incurred
by the plaintiff for his own costs and expenses in and about
the defending of the said action.]

The plaintiff claims \$ (*amount of penalty*) and his
costs of action.

SECTION X.—BUILDER.

(*Formal parts: see No. 123.*)

172

Claim by
builder on
contract for
building a
house.

1. The plaintiff is a builder and contractor carrying on business at

2. The defendant is

3. [By an agreement in writing dated day of , 19 , made between the plaintiff and defendant] it was agreed by and between the plaintiff and defendant, that the plaintiff should erect for the defendant a house, in the City of in accordance with certain plans and specifications prepared by the architect of the defendant.

4. The said agreement contained amongst other provisions the following (*set out any special terms of agreement relied upon.*)

5. It is further provided in said agreement, that payment should be made to the plaintiff by instalments equal to per cent. of the value of the buildings when erected and the balance within after the final completion of the said house, to the satisfaction of the said architect, and that payment of such instalments should be made upon the production of the written progress certificates of the said architect, and that the balance of the contract price should be paid within one month from the final completion of the said house to the satisfaction of the said architect, and upon the production of his certificate to that effect.

6. The plaintiff duly completed the building of the said house in accordance with the said plans and specifications.

7. The said architect gave to the plaintiff his written progress certificates from time to time during the progress of the work, and has given to the plaintiff his written certificate that the said house was completed to the satisfaction of the said architect on the day of .

8. The defendant has paid the plaintiff the sum of \$ on account of the contract price, but there remains unpaid the amount of the two last payments certified by the progress certificates of the said architect and the amount of the final certificate of the said architect.

9. The plaintiff has produced the said certificates to the defendant and demanded payment of the sum of \$ due thereunder, and the defendant has not paid the same or any part thereof.

Claim where the architect has refused his certificate. Instead of 7 to 9 inclusive.)

[7. The said house was more than a month prior to the commencement of this action, namely on the day of duly completed by the plaintiff to the satisfaction of the said architect.

8. The plaintiff has applied to the said architect from time to time for the said two last progress certificates, and the said final certificate entitling the plaintiff to payment of the two last progress instalments aforesaid, and to the balance of the contract price, but the said architect has neglected and refused in fraudulent collusion with the defendant, to give the same to the plaintiff.]

SECTION XI.—BY-LAWS.

Statement of Claim.

(Formal parts: see No. 123.)

1. By an Act of the Parliament of the late Province of Canada, passed in the 27th year of the reign of Her late Majesty Queen Victoria, and chaptered 93, the above named defendants, the Wellington, Grey and Bruce Railway Company, were incorporated with power and authority to lay out, construct, make and finish a double or single Iron Railway from the Town of Guelph to the Village of Southampton or other point on Lake Huron, in the County of Bruce, with a branch, should they so desire it, to the Town of Owen Sound in the County of Grey; and other powers and authorities were by the said Act conferred upon, and vested in the said defendants the Wellington, Grey and Bruce Railway Company.

173
Claim to set aside a by-law of a municipal corporation granting a bonus to a railway company.

2. By an Act of the Legislature of the Province of Ontario, passed in the 31st year of the reign of Her said Majesty, and chaptered 13, after reciting that the said Wellington, Grey and Bruce Railway Company had by their petition set forth that various municipalities to the north and north-west of the Town of Guelph being deeply interested in the establishment of railways, and being destitute of proper facilities for communicating with the various produce markets of the Province were desirous of aiding the undertaking of the said

Wellington, Grey and Bruce Railway Company, by free grants or donations of debentures by way of bonus; but that no means existed by law of granting such proposed aid, except by the subscription of stock, which the said municipality desired to avoid, it was amongst other things enacted, that it should be lawful for any municipality interested in the said undertaking, to pass a by-law or by-laws authorizing aid to the said railway, by the issue of debentures, to be given to the said railway company, as a free gift or donation, by way of bonus, upon such terms and subject to such restrictions and conditions as might be mutually agreed on between such municipality and the directors of the said railway company; and the directors for the time being were authorized and empowered, on behalf of the company, to enter into an agreement or agreements for the due performance of any such terms and conditions as might be contained in such by-law, or mutually agreed upon between said directors and the council of such municipality; provided always, that any such by-law to be valid, should be made in conformity with the laws of the said Province respecting municipal institutions.

3. By the said in part last recited Act, it was further enacted that it should be lawful for the council of the municipality, with the assent of the ratepayers, at the request of the railway company, from time to time, to make such alterations in the conditions of such by-laws as might be found necessary or expedient, due notice being given for the same period, and in the same manner as required under section 338 of the *Municipal Act*, and that a copy of any by-law containing such alterations, should be forthwith transmitted to the treasurer of the Province of Ontario.

4. The defendants, the Corporation of the Township of Turnberry, are a municipal corporation under the statutes in that behalf, and a municipality within the meaning of the last mentioned Act of the Legislature of the Province of Ontario; and the plaintiffs have for several years been, and now are, ratepayers of the said township, duly qualified, and having the right to vote upon the by-law hereinafter mentioned.

5. The council of the said municipality during the year 19 , was composed of the following persons, viz.:—the defendant, J. M., Reeve; W. C., Deputy Reeve; and J. H., W. H. L., and D. H., Councillors.

6. At a meeting of the said council, held on the 14th day of August, 19 , a resolution was passed in the words

and figures following; that is to say,—“That this council submit a by-law to the ratepayers of this township, to grant a bonus of \$28,000, to aid in the construction of the Wellington, Grey and Bruce Railway, and that a vote of the electors be taken at lot 15, con. 7, on the 11th September, next, and that James Johnston be returning officer.”

7. In pursuance of the said resolution, and on the 11th day of September, 19 , the said council pretended or assumed to submit to the ratepayers a by-law, and on the conclusion of the voting thereon, the same was declared carried by a majority of twelve of the ratepayers who voted upon said by-law.

8. The said by-law is in the words and figures following:—

“A BY-LAW.

“To aid the Wellington, Grey and Bruce Railway Company by a free grant or donation of debentures by way of bonus, to the extent of \$28,000, subject to certain terms, restrictions and conditions.”

“Whereas, by certain Acts passed by the Legislature of the Province of Ontario, the municipalities therein referred to are authorized to aid the Wellington, Grey and Bruce Railway, by free grants or donations of debentures by way of bonus. And whereas the Municipal Council of the Township of Turnberry, being one of the municipalities so authorized, are desirous of aiding the said railway by the free grant or donation of debentures, to the extent of twenty-eight thousand dollars, and propose to issue debentures for that purpose. And whereas it will require the sum of \$3,080 to be raised annually by special rate for the payment of the said debentures, and the interest thereon as hereinafter mentioned.

“And whereas, the amount of the whole rateable property of the said municipality, irrespective of any future increase of the same, and also irrespective of any income to be derived from the temporary investment of the sinking fund, hereinafter mentioned, or any part thereof, according to the last revised assessment roll, of the said municipality, being for the year 19 , was \$286,500, (two hundred and eighty-six thousand five hundred dollars.)

“And whereas the amount of the existing debt of the said municipality, is as follows: Principal, \$; Interest, the sum of \$, making in the aggregate the sum of \$, of which interest no portion is in arrear.

“And whereas, for paying the interest and creating an equal yearly sinking fund for paying the said sum of \$28,000, and interest, as hereinafter mentioned, it will require an equal annual special rate of one and one-tenth cents in the dollar in addition to all other rates to be levied in each year.”

“Be it therefore enacted by the Municipal Council of the Township of Turnberry:—

1. “That it shall be lawful for the Reeve of the said township, and he is hereby required to issue debentures, to the extent of twenty-eight thousand dollars in sums not less than \$100 each, which debentures shall be sealed with the seal of the said municipal council, and be signed by the said Reeve, and countersigned by the treasurer.”

2. “That the said debentures shall be made payable in twenty years from the day hereinafter mentioned for this by-law to take effect, at the office of the Canadian Bank of Commerce, at Goderich; and shall have attached to them coupons for the payment of interest.

3. “That the said debentures shall bear interest at and after the rate of six per cent. per annum from the date thereof, which interest shall be payable on the first days of January and July in each year.

4. “That for the purpose of forming a sinking fund for the payment of the said debentures, and the interest at the rate aforesaid to become due thereon, an equal special rate of one and one-tenths cents in the dollar, shall in addition to all other rates be raised, levied and collected in each year, upon all the rateable property in the said municipality, during the continuance of the said debentures, or any of them.

“Provided always, and it is hereby declared, that this by-law is passed subject to the following stipulations and conditions:—

1. “That before the Reeve shall issue the said debentures, the railway company shall furnish an agreement under the seal of the company (a copy whereof has been submitted to and approved of by this council), undertaking and binding the company in the manner set forth therein, to commence the extension therein referred to, that is to say, the extension of the said Wellington, Grey and Bruce Railway, through South Bruce and North Huron to Lucknow, within three months after the final passing of this by-law, and to complete the same to Lucknow ready for traffic, within two years from that time; and to erect a station at or near to Bluevale, and another at or near to Wingham.

“And provided, that the debentures shall be deposited with the Treasurer of the Province of Ontario, or in one of the chartered banks of this Province, or of the late Province of Canada, and the same shall be delivered to the company on the certificate of the engineer of the company, confirmed by the certificate, for the time being, of the chief engineer of the Great Western Railway, as the work progresses through the Township of Turnberry, the production of which certificate shall entitle the company to demand and receive from the said municipality debentures to the amount so mentioned, with the current coupon and those yet to mature.

“And provided further, that if the work shall not be commenced within the said period of three months above specified, it shall be optional with the council, by resolution duly passed to that effect, to declare this by-law and the agreement founded thereon, cancelled and at an end.

5. “That this by-law shall take effect and come into operation upon the 2nd (second) day of October, A.D. 19 .”

6. “That the said debentures shall be deposited within one month after the final passing of this by-law, either with the Provincial Treasurer, or in one of the chartered banks of Canada.

7. “And be it further enacted, that the votes of the electors of this municipality shall be taken upon this by-law, as follows, namely: At the place hereinafter mentioned and referred to in the notice appended to this by-law, being the place at which the elections of members of council are held, on the eleventh day of September next (19), at the hour of nine o'clock in the forenoon, and ending at five o'clock in the afternoon of the same day, and that the following person shall be returning officer to take the votes at such place:—

“Returning officer, James Johnston. Place of voting, lot 15, concession 7, Turnberry.”

9. The said by-law was not, prior to submitting the same to the ratepayers of the said municipality, read a first and second time before the said council, as by law required.

10. In and by the agreement between the said defendants the railway company and the said council referred to in the said by-law, to be furnished by the said railway company under the seal of the said company, and a copy whereof had been submitted to and approved by the said council, it was expressly stipulated and agreed, that the said by-law and agreement were based upon the contingency of the said rail-

way company obtaining from the Government of the Province of Ontario a grant of at least the minimum amount authorized to be granted in aid of railways, out of the funds set apart and designated as the "railway fund," in an Act of the Legislature of the said Province, passed in the 34th year of the reign of Her Majesty Queen Victoria, and chaptered 2, and by the same agreement it was provided that if the amount to which the said railway company was entitled was not obtained within three months from the passing of the by-law, the said agreement was at the option of either party to be cancelled and rescinded, and the company were not in such event to be entitled to the said debentures but the said by-law was to be treated as if it had never been made, ratified or passed.

11. The said stipulation and agreement were well known and understood by the ratepayers of the said township, and it was strongly urged upon and represented to the said ratepayers, by the supporters of the said by-law in the interest of the said railway company, as a principal inducement for voting in favour of the said by-law, that in the event of the same being passed the ratepayers of the township would not be taxed for the said debentures, unless within the three months specified in the said agreement after the passing of the said by-law the said railway company procured from the Government as aforesaid a grant of at least the minimum amount authorized to be granted in aid of railways as aforesaid, and a great number of those ratepayers who voted in favour of the said by-law, so voted upon the faith of the said stipulation and agreement, and upon the understanding that they would not be burdened or taxed for the said debentures, unless the said grant was obtained as aforesaid.

12. Had it not been for such representations as aforesaid, and the understanding of the ratepayers as to the said stipulation and agreement as aforesaid, the said by-law would not have been passed by the said ratepayers, but on the contrary would have been rejected by a large majority.

13. A large number of persons who voted in favour of the said by-law were persons who were not duly qualified or entitled to vote upon the said by-law, the said persons either not having their names upon the assessment roll of the said township at all, or being assessed in respect of property which would not entitle or qualify them legally to vote upon the said by-law, or being persons owning or holding no property in the said township, or owning or holding no property which would entitle or qualify them legally to vote upon the said

by-law; and some persons voted more than once in favour of the said by-law, and the plaintiffs charge that upon a scrutiny and inquiry into the validity and legality of the votes given and recorded in favour of the said by-law, a large number of them will be found illegal and improper, for the reasons above stated, as well as for other good and valid reasons.

14. Among the persons so voting, and who were not duly qualified or entitled to vote, as aforesaid, are the following, that is to say: E.F., R. S., I.T., H.B., J.McD., W.L., R.W., J.F., A.G., W.M., J.R., W.F., M.F., J.A., J.L., the elder, P.W., W.A.C., T.McC., the elder, H.R., J.K., R.C., C.G., J.L., J.G., and others.

15. The plaintiffs allege, that the said railway company paid divers sums, and made divers promises of reward and emolument, and held out inducements of personal advantage to several of the ratepayers of the said township, in order to procure their votes in favour of the said by-law; and that several of the said ratepayers of the said township were, by bribery and corruption, as aforesaid, induced to vote, and did vote in favour of the said by-law.

16. The said by-law was not duly passed by a majority of the duly qualified ratepayers of the said township, entitled to vote upon the said by-law, but on the contrary, the majority of the valid and legal votes recorded upon the said by-law, was in favour of rejecting the same, and that the same is not a valid and legal by-law.

17. After the said by-law was declared carried, as aforesaid, the same was at a special meeting of the said council, held on the 21st day of September, 19 , read a first, second and third time, before and passed by the said council, which said action of the said council was, at a meeting thereof held on the 2nd day of October, 19 , confirmed by a resolution of the said council, passed at the said last mentioned meeting.

18. Shortly after the said by-law was declared passed by the said council, as aforesaid, the agreement referred to in the said by-law was duly signed and sealed on behalf of the said railway company, and delivered into the custody of the defendant, J.M., who now has the same in his possession.

19. Sometime in the month of November, 19 , the said company having ascertained, as the fact was, that they would not be able to obtain from the Government a grant out of the said railway fund, as aforesaid, within the period of three months from the passing of the said by-law, and that they

were therefore unable and could not entitle themselves to call upon the said township to issue the debentures provided for in the said by-law, made some application to the said council, or the members thereof the nature whereof the plaintiffs are unable to set forth, for the purpose and with the view of altering the terms, conditions and stipulations of the said agreement, so signed and delivered by the railway company, as aforesaid, in order that the said company might be put in a position to demand the said debentures from the said township, notwithstanding their failure to procure the said grant within the said period.

20. On or about the 25th day of November, 19 , a new agreement was drawn up, signed and delivered by the said railway company to the said defendant, J.M., as the Reeve of the said council, in which said agreement the stipulation and agreement hereinbefore set forth, with respect to the said railway company obtaining the said grant within three months from the passing of the said by-law, was omitted and in lieu thereof was inserted a proviso, that the said agreement was based upon the contingency of obtaining from the Government of Ontario at least the minimum amount authorized to be granted to railways, as aforesaid; and in the event of such aid not being obtained, the agreement should, at the option of the company, be cancelled and rescinded; but no time was limited within which the said grant was to be obtained, and no option to rescind the same was given to the said township.

21. The said last mentioned agreement is materially different from the agreement upon the faith of which the said by-law was submitted to and voted upon by the said ratepayers, and is in direct violation of the representations and understanding upon which the said by-law was voted for and declared carried, as aforesaid, and no by-law containing such alteration of the terms and conditions of the said by-law was ever submitted to the said ratepayers, or assented to by them as required by the statutes hereinbefore referred to, nor was the consent of the said ratepayers thereto ever obtained, nor the proceedings prescribed by the said section 338 of the Municipal Act ever taken with regard thereto.

22. The said defendant J.M., as such Reeve as aforesaid assumed to accept the said last mentioned agreement in lieu of and in substitution for the said former agreement and he assumed to sign and seal the said debentures mentioned in the said by-law, on behalf of the said township.

23. The defendant J.M., having determined to aid the said railway company in obtaining the said debentures, caused a special meeting of the said old council to be called at the instance, and request of the directors of the said railway company, for the 8th day of January, 19 , and the said meeting was attended by the said J.M., Reeve, W.C., Deputy Reeve and J.H., and W.H.L., Councillors; the said D.H., not having received any notice of such meeting as by law required, and at such meeting a resolution was passed that the said debentures so signed and sealed by the said defendant J.M., on behalf of the said township, should be placed in the hands of the Provincial Treasurer of the Province of Ontario, and that the said defendant J.M., should deposit the same forthwith, but the said meeting was not duly called, and was wholly irregular; and the said resolution could not and did not give the said defendant J.M., any power or authority to deposit the said debentures as therein mentioned.

24. In pursuance of the said resolution, the said defendant J.M., undertook to deposit the said debentures with the Provincial Treasurer, as aforesaid; but before depositing the same as directed by the said resolution, the said defendant J.M., communicated the said resolution and his intention to deposit the said debentures to the defendant W. McG., who is the president of the said railway company, and thereupon the said defendants J.M., and W. McG., assumed to again alter the said agreement entered into on the 25th day of November, 19 , by striking out and cancelling the proviso that in the event of the said aid not being obtained, the said agreement should at the option of the said railway company, be cancelled and rescinded.

25. The said alteration was made in the agreement theretofore signed and sealed on the part of the said railway company, and the Municipality of the Township of Turnberry, and the said alteration was effected by striking out or obliterating with a pen the proviso in the last preceding paragraph referred to; and the plaintiffs say, and the fact is, that the said defendant J. M., had not authority, nor was he empowered, on behalf of the said municipality, to make or consent to any or such alteration, as aforesaid, and the same was a wholly unauthorized act on the part of the said defendants.

26. After the said alteration had been effected, the said defendant J. M. deposited the said debentures with the Provincial Treasurer of this Province, in whose custody the same now are.

27. The said defendants, the railway company, did not, within the period of three months from the passing of the said by-law, obtain, nor have they since obtained, nor are they in a position to obtain from the Government a grant out of the said railway fund in aid of their said undertaking; but, nevertheless, they insist and claim that they are entitled to the benefit of the said debentures, and to have the same from time to time delivered to them by the said Provincial Treasurer, in accordance with the terms of the said by-law; and they threaten, and intend to and will, unless restrained by the injunction of this Court, require and procure the said Provincial Treasurer to deliver to them from time to time such portions of the said debentures as the amount of work certified to be done, according to the terms of the said by-law, will enable them to demand.

28. The plaintiffs submit, that by reason of the said by-law not having been read before the said council, before the same was submitted to the ratepayers of the said township, as in the 9th paragraph hereof set forth, the said debentures could not be legally issued under the authority thereof, and that the plaintiffs and the other ratepayers of the said township are not bound by the said by-law, and ought not to be called upon to meet or pay the said debentures.

29. The plaintiffs further submit that by reason of the illegal votes recorded in favour of the said by-law, and by reason of the same not having in fact been ratified or passed by a majority of the ratepayers of the said township qualified and entitled to vote thereon, and by reason of a large number of votes in favour of the said by-law having been procured by bribery and corruption practised by and on behalf of the said railway company, the said by-law is not binding on the plaintiffs and the other ratepayers of the said township, and that they ought not to be called on to meet or pay the said debentures.

30. The plaintiffs further submit that by reason of the material alterations and variations of the said agreement upon the faith of which the said by-law was voted for and declared passed hereinbefore set forth, the said debentures have been illegally and improperly issued and deposited with the Provincial Treasurer, and that they ought to be delivered up to be cancelled.

31. The defendants the said M., and the said railway company and the said McG., combined and confederated together in order to procure the said resolution of the 8th

January, 19 , to be passed with the intent of fraudulently obtaining the said debentures to be issued contrary to the contract with the said township, upon which the same had originally been agreed to be issued and contrary to law, and the passing and acting upon such a resolution was a fraud upon the ratepayers of the said township.

32. The defendants J. M., and W. McG., have fraudulently combined together in altering the said agreement, and in aiding the said railway company to obtain the said debentures and the benefit thereof, notwithstanding the failure of the said railway company to comply with the terms and conditions of the agreement, upon the faith of which the said by-law was declared passed, as aforesaid, and they ought to be ordered to pay the plaintiffs' costs of this action.

The plaintiffs claim:

1. A declaration of this Honourable Court that the said by-law is illegal and invalid; and that the plaintiffs and the other ratepayers of the said township and the said township are not liable to meet or pay the said debentures issued in pretended pursuance thereof, as aforesaid.

2. A declaration that the said debentures were illegally and improperly issued.

3. A direction that the said by-law be set aside and quashed, and that the said debentures be delivered up to be cancelled.

4. An injunction restraining the said defendants the railway company and W. McG., their President, from requiring or procuring, or endeavouring to procure, the said Provincial Treasurer to deliver to them any of the said debentures, and from dealing, or in any way attempting to deal with the said debentures, or any of them.

5. The costs of this action.

6. Such further and other relief as may appear just.

SECTION XII—CARRIERS.

(*Formal parts: see No. 123.*)

1. The plaintiffs are (*as may be the case*) and carriers Carriers' claim for freight against consignee. of goods for hire.
2. The defendant is a manufacturer of [*or a dealer* in] at .

3. On the day of , 19 , the defendant [or Messrs. A. B. & Co., acting agents for the defendant] delivered to the plaintiffs bales of to be carried by the plaintiffs from to , and there to be delivered to [Messrs. G. & H. & Co., or the defendant, as the case may be] at the plaintiffs' usual rates for carriage of such goods.

4. The plaintiffs safely carried the said goods from to , and delivered the same to [Messrs. G. & H. & Co., or the defendant, as the case may be].

5. The amount payable for conveying and delivering the said goods according to the plaintiffs' usual charges is \$, and the defendant has not paid the same or any part thereof.

The plaintiffs claim \$, and their costs of action.

175

Defence and counter-claim to claim of carrier for freight.

(Formal parts: see No. 125.)

1. The defendants deny that the amount of \$, is due for the carriage and delivery of the said goods according to the plaintiffs' usual charges, and say that the usual rate at which such goods are carried from to , by the defendants is \$1.87 per bale, and that there is only due in respect of the said carriage and delivery the sum of \$187.00.

By way of counterclaim the defendants say:—

1. That the plaintiffs made default in delivering the said goods within a reasonable time, and that the same were not delivered until after a lapse of four weeks from the time at which they ought to have been delivered.

2. The defendants in consequence of such delay lost the season for the sale of such goods, and they were compelled to sell the same at a reduction in price, in consequence of such loss. (a)

3. The difference in price which the defendants would have realized by the sale of the said goods, if they had been delivered at a reasonable time, and the price for which they were actually sold as aforesaid, is \$500.

4. After giving credit to the plaintiffs for the amount admitted to be due to the plaintiffs there is due to the defendants the sum of \$313.

The defendants claim \$313 and their costs.

(a) See *Monteith v. Merchants Despatch, &c., Co.*, 1 Ont. 47; 9 Ont. App. 282.

(Formal parts: see No. 123.)

176

1. The plaintiffs are wholesale merchants carry- Claim for injury by non-carriage, loss or conversion of goods.
- ing on business in the City of .
2. The defendants are common carriers, carrying on business in the Province of Ontario.

3. On or about the day of , 19 , the plaintiffs delivered to the defendants, and the defendants as such common carriers received from the plaintiffs, certain goods of the plaintiffs (namely) to be by the defendants safely and securely carried from to , and at the said to be delivered to upon payment of the defendants' usual charges in that behalf.

4. On the arrival of the said (goods) at afore-said, the said were found to have been (while in the custody of the defendants completely broken and so injured or destroyed as to be worthless to the plaintiffs).

[Or defendants did not safely and securely carry the said goods from the said to said or there deliver the same to but lost the same.]

[Or defendants did not safely and securely carry the said goods from to , but while the same were in the custody of the defendants or their servants, the cases in which the said (goods) were packed were opened and a large number of the said (goods) abstracted and the remainder injured and destroyed, and the said goods were in that condition delivered by the defendants to the said (*consignee*) whereby the plaintiff has lost the value of the said goods and has become liable to pay to the said (*consignee*) the charges for freight and other charges paid by the said (*consignee*).

(Formal parts: see No. 123.)

177

1. The plaintiffs are merchants carrying on business in Another form. the City of Toronto. The defendant is a carrier, also carrying on business in the City of Toronto.

2. Before the grievances hereinafter mentioned the plaintiffs had contracted to sell a case of furs to Messrs. A. & Co. of , and two cases of furs to Messrs. B. & Co. of .

3. The plaintiffs delivered to the defendant the said three cases of furs directed to the said Messrs. A. & Co., and Messrs.

B. & Co., respectively, to be carried by him, as a common carrier, for reward, to the Grand Trunk Railway freight shed for shipment to the consignees per Grand Trunk Railway.

4. The defendant did not deliver the said goods at the Grand Trunk Railway freight shed. While the goods were in the custody of the defendant or his servants, the said goods were by the defendant's servants or by some persons unknown, feloniously stolen. The cases were unpacked and their contents abstracted, and the cases were refilled with rubbish and re-packed in such a manner that the theft could not be detected from their exterior appearance. They were in this state delivered by the defendant at the said G. T. R. freight shed, and were there shipped to the consignees.

5. By reason of the conversion by the defendant of the said goods, and his default in carrying the same, the plaintiffs have lost the value of the said goods. They are also liable to repay the consignees the freight and charges incident to the shipment of the cases.

The plaintiffs claim:

1. \$ the value of the said goods.
2. Or alternatively the said sum for damages for the conversion.
3. \$ the amount of the said freight and charges.

(*Formal parts: see No. 125.*)

178

Defence to
claim for non-
carriage and
loss and con-
version.

1. The defendant says he is a carter, and not a common carrier, and he only carries the goods of his employers when, where, or as it is in each case specially agreed by him.

2. The defendant as such carter and not as a common carrier, at the plaintiffs' request received three cases of goods, to be conveyed to the Grand Trunk Railway freight shed for shipment, one case to Messrs. *A. & C.*, and two to Messrs. *B. & Co.*, and the defendant used due diligence and care, safely and securely to carry the said goods to the said freight shed.

3. The defendant denies that the said cases contained furs when delivered to him, and also denies that the said cases were unpacked, and that their contents were stolen while they were in the defendant's custody, as alleged.

4. The defendant further denies that the said goods were the plaintiffs', or that the defendant converted them as is alleged.

5. The defendant says that if, when the said cases were delivered by him, at the said Grand Trunk Railway freight shed, the said goods had been feloniously stolen, as in the statement of claim alleged, they were so stolen without the defendant's knowledge or consent, and without any negligence or want of care of the defendant or his servants, and that he never, expressly or impliedly, agreed or undertook to be liable in case the said goods were feloniously stolen without his default.

(*Formal parts: see No. 123.*)

1. The plaintiff is a fishmonger carrying on business in Toronto.

179
Claim against
common carriers for injury to goods

2. The defendants are common carriers of goods.

3. On or about the day of , 19 , the plaintiff by his agents, Messrs. A. & B., delivered to the defendants as such carriers 20 boxes of fish to be by them safely carried to Toronto and there, within a reasonable time, delivered to the plaintiff.

4. The defendants received the said boxes of fish in good condition, but did not safely carry the same to Toronto, nor there within a reasonable time deliver them to the plaintiff.

5. Four of the said boxes were broken and the greater part of the contents lost or destroyed in the course of the journey, and the remainder of their contents were delivered in Toronto in a damaged condition and so as to be worthless.

6. Ten of such boxes have never been delivered to the plaintiff, and the remaining 6 boxes were only delivered to the plaintiff after a delay of two weeks, in consequence of which delay the said fish became stale and worthless to the plaintiffs.

The plaintiff claims \$ damages and his costs of action.

(*Formal parts: see No. 125.*)

The damage [or loss] alleged arose from the bad condition of the goods when received by the defendants, or from the same having been by the negligence of the plaintiff [or the said the agents of the plaintiff] improperly and insecurely packed *giving particulars*], whereby the plaintiffs were prevented from safely carrying and delivering the same

180
Defences to preceding claim.
Damage by fault of plaintiff.

as the defendants otherwise would have done, and the damage [or loss] occurred solely by reason of such negligence and improper and insecure packing.

Or,

Special
exemption.

The said goods were received by the defendants to be carried by them pursuant to a special contract in that behalf, made (in writing) between the plaintiff and defendants, one term of which was that the defendants should not be liable to the plaintiff for any damage or loss in respect of said goods occasioned by (*as may be the case, setting out the terms of the contract relied on, then allege that the damage or loss arose from a cause within the meaning of the exemption.*)

(Formal parts: see No. 123.)

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Claim against
several com-
mon carriers
for deteriora-
tion of goods
injured
through neg-
ligence of
carriers.

1. The defendants are carriers of goods for hire.
2. On or about the day of , 19 , the plaintiffs delivered to the defendants 400 packages of butter at the City of , in the Province of Ontario, to be by them safely and securely carried with reasonable speed to the City of New York, in the United States of America, and there shipped on board a steamship to sail therefrom on the day of aforesaid, and delivered within a reasonable time to the plaintiff as follows: 300 packages thereof at the City of Bristol, in the United Kingdom of Great Britain and Ireland, and 100 packages thereof at the Town of Cardiff, in the said United Kingdom, and the said defendants received the said goods and undertook to carry the same as aforesaid and upon the terms aforesaid.
3. The defendants did not safely and securely carry the said goods with reasonable speed and within a reasonable time, nor ship the same upon such steamship by the time aforesaid, but detained the same for a long and unreasonable time, and neglected to take proper care thereof while in course of transportation, to the loss and damage of the plaintiff as herein-after mentioned.
4. Owing to the negligence, delay and want of care of the defendants as aforesaid, the said butter was greatly damaged and depreciated in value, and a large part thereof rendered entirely useless, and the plaintiff by reason of the premises suffered loss and damage to the extent of \$.
5. The plaintiff has applied to the defendants for payment of the damage sustained by him, by reason of their neglect

and default as aforesaid, but the said defendants have neglected and refused, and still neglect and refuse, to pay the same.

6. The plaintiff is bringing this action in ignorance as to which of the defendants he is entitled to recover from.

The plaintiff claims, &c.

SECTION XIII.—COMPANY.

(*Formal parts: see No. 123.*)

1. The plaintiffs are a company incorporated (*as the case may be*). **182**
Claim by company for calls on shares.
2. The defendant is [*or was*] a shareholder in the said company, and a holder of shares therein.
3. While the defendant was such shareholder a call of \$ was duly made upon each of the said shares, pursuant to the Act of incorporation and by-laws of the said company.
4. Due notice of the said call was given to the defendant, and the said call thereupon, under the said Act and by-laws, became due and payable by the defendant on the day of , 19 , but the defendant has not paid the same.
5. There is now due and owing from the defendant to the plaintiffs in respect of the said call \$.
The plaintiffs claim \$, and their costs of this action.

(*Formal parts: see No. 123.*)

1. The plaintiffs are a company incorporated (*statement of incorporation shewing that the company is subject to R. S. O. c. 191 or R. S. C. c. 119, as the case may be*). **183**
Claim for calls on shares under special statutory provisions. (a)
2. The defendant is the holder of shares in said company, and is indebted to the plaintiffs in the sum of \$ in respect of a call [*or three calls of \$, \$, and \$, respectively*], upon such shares and for interest thereon [upon \$ from the day of , and upon \$ from the day of , and upon \$ from the day of , such dates being the days upon

(a) See R. S. O. 1897 c. 191, s. 34; R. S. C. c. 119, s. 42.

which the said calls respectively became due and payable] whereby an action has accrued to the plaintiffs under the said Act [*or* under chapter 191 of the Revised Statutes of Ontario, *or* chapter 119 of the Revised Statutes of Canada], but the defendant has not paid the said sum

3. The plaintiffs claim \$ and their costs of this action.

184

Claim by a company to set aside a secret fraudulent agreement entered into by defendants with promoter of the company.

See No. 229.

185

Claim against shareholders of joint stock company by creditors of the company for payment of debt.

(*Formal parts: see No. 123.*)

Between—*N.D., J.I.D., and J.N.*, who sue as well on their own behalf as on behalf of all creditors of the defendants the *O. W. P. Co.* of Toronto,

Plaintiffs,

and

The *O. W. P. Company* of Toronto,
G. A., J. L., J. McM., and J.D.,
Defendants.

1. The plaintiff, *N. D., J. I. D., and J. N.*, reside in the City of Toronto, in the County of York, and Province of Ontario, and are iron founders, and sue as well on their own behalf as on behalf of all the creditors of the defendants, the *O. W. P. Company* of Toronto.

2. The defendants, the *O. W. P. Company* of Toronto, are a body corporate within the Province of Ontario, incorporated by virtue of Letters Patent issued under the Great Seal of the Province of Ontario, in pursuance of certain statutes in that behalf in force in the said Province.

3. The plaintiffs, on the 8th day of January, 19 , recovered a judgment in this Honourable Court against the defendants, the *O. W. P. Company* of Toronto, for \$4,984.58 damages and \$64.22 costs.

4. On the same day the plaintiffs sued out upon the said judgment a writ of *fieri facias* against the goods and lands

of the said defendants, the O. W. P. Company of Toronto, directed to the Sheriff of the County of York, and on the same day delivered the same to the said Sheriff to be executed.

5. The said Sheriff under the said writ seized and took in execution and sold all the goods and chattels of the said defendants the O. W. P. Company of Toronto, which could be seized and taken in execution, and made upon the said execution the sum of \$1,400 and returned "*nulla bona*" and "no lands" as to the residue, and there still is due to the plaintiffs on account of the said judgment the balance of the said judgment debt, interest and costs.

6. There are also divers other creditors of the said defendants the O. W. P. Company of Toronto, whose claims are unsatisfied.

7. There is no other fund, and there are no assets of the defendants, the O. W. P. Company of Toronto, available for payment of the debt of the plaintiffs, except the sums due upon the stock hereinafter mentioned.

8. The defendants, other than the defendants the O. W. P. Company of Toronto, are the directors of the said company, and are the holders of 1,310 shares in the stock thereof, but in what shares and proportions the plaintiffs are unable to set forth.

9. No more than 1,310 shares of the stock of the company were subscribed or taken up.

10. The amount of the stock of the said company held by the said defendants, other than the defendants the O. W. P. Company of Toronto, is \$131,000, upon which the said defendants, other than the company, have paid the sum of \$8,000 and no more, and a balance of \$123,000 is still due from the said defendants, other than the defendants the O. W. P. Company of Toronto, to the said last-named defendants, in certain proportions which the plaintiffs are unable accurately to set forth.

11. The defendants, other than the O. W. P. Company of Toronto, have in their possession all the stock books and other papers of the defendants the O. W. P. Company of Toronto, and refuse to allow the plaintiffs to inspect the same or to furnish any information respecting the amount of stock held by the said several defendants, other than the O. W. P. Company of Toronto.

12. The said defendants the O. W. P. Company of Toronto have ceased their operations, and do not intend to commence the same again.

13. The plaintiffs applied to the defendants, other than the O. W. P. Company of Toronto, to make payment of the balance of the said judgment, and for that purpose to compel payment of the balance of the amounts due from the defendants, other than the O. W. P. Company of Toronto, to the said defendants the O. W. P. Company of Toronto, upon the said stock subscribed by them respectively, but the said defendants, other than the O. W. P. Company of Toronto, refuse so to do.

14. By the terms of the charter of the said company and of the said statutes, it is provided that in the event of the property or assets of the said company becoming insufficient to liquidate the liabilities or engagements thereof, the shareholders of its stock shall be individually liable for the deficiency, and shall contribute thereto ratably, but to no greater extent than to an amount equal to that not paid up on the said stock held by them respectively.

The plaintiffs claim:

1. Payment of the amount of their said debt, or, in default thereof, that the defendants, other than the O. W. P. Company of Toronto, may be ordered to contribute in proportion to their several liability, and thereby to pay up, so far as may be required, the balance due upon the stock held by them, and that the same may be applied in payment of the amount of the claim of the plaintiffs and the said other creditors.

2. Such further and other relief as to this Honourable Court may seem meet.

3. Their costs of this action.

4. For the purposes aforesaid all proper directions to be given and accounts taken.

SECTION XIV.—COPYRIGHT.

(*Formal parts: see No. 123.*)

186

Claim for infringement of copyright in a book, by printing or selling copies and for an injunction.

1. The plaintiff is and has been since proprietor of a subsisting copyright in a book entitled The Ontario Judicature Act, under the provisions of the Copyright Act.

2. The defendant is a bookseller and publisher, carrying on business at

(a) The plaintiff may also be entitled to sue for penalties under R. S. O. c. 62, s. 30.

3. In or about the month of _____, 19____, the defendant printed for sale and published a book entitled _____, chapters _____ and _____ of which are taken from the plaintiff's said copyright book, without the consent of the plaintiff.

[Or defendant without the consent of the plaintiff did in or about the month of _____, print or cause to be printed for sale and did publish a large number of copies of the said book and offered for sale many copies thereof.)

4. The defendant has in his possession or under his control, a large number of copies of the said book so printed or caused to be printed by him as aforesaid.

5. The plaintiff before the commencement of this action demanded the said copies from the defendant, but the defendant refuses to deliver them to the plaintiff and threatens to sell and will sell the same, unless prevented by the order or injunction of this Court.

The plaintiff claims:

1. \$ _____ damages for the infringement of said copyright.

2. Delivery by the defendant of all copies of the said book printed by the defendant which are in the defendant's possession or under his control.

3. An injunction order restraining the defendant from selling or offering for sale the copies of the said book so wrongfully printed.

(Formal parts: see No. 123.)

1. The plaintiff is a historical writer. The defendant is a bookseller and publisher, carrying on business in the City of Toronto. **187**
Another form.

2. On the _____ day of _____, 19____, the plaintiff was the proprietor of a subsisting copyright in a book entitled "_____."

3. On or about the same date, one E. F. printed for sale several thousand copies of the said book.

4. The said E. F. in printing the said copies, acted without the consent in writing or otherwise of the plaintiff and contrary to the Statute in that behalf made and provided.

5. The defendant well knowing the premises and that the said E. F. acted unlawfully in printing the said copies of the said book, sold and offered for sale many copies of the same.

6. In consequence of the matters hereinbefore stated, the plaintiff's profits in his said copyright have been much diminished.

The plaintiff claims, &c., &c.

SECTION XV.—DEFAMATION.

188

Notice before
action of state-
ments in a
newspaper
complained of
as libellous.
(a)

Take notice that I complain of certain statements published of or concerning me in the issue of the news-
paper published on the day of , 19 , as
being libellous, which said statements are as follows: (*Set
out the statements complained of verbatim*).

And take further notice that this notice is given to you pursuant to *The Act respecting Actions of Libel and Slander*, R. S. O. 1897, chapter 68, section 6.

Dated at this day of , 19 .
(*Signature*).

To publisher of the newspaper.

(*Formal parts: see No. 123.*)

189

Claim for libel

1. The plaintiff is , the defendants are proprietors and publishers of a newspaper called the .

2. On or about the day of , 19 , the defendants in their said newspaper falsely and maliciously printed and published of the plaintiff, the words following, that is to say (*setting out the exact words*) meaning thereby (*stating the meaning to be imputed*).

3. In consequence of the premises, the plaintiff has been and is greatly injured in his character and reputation and in his said business of .

4. (*Add special damage if any*).

The plaintiff claims \$ damages and costs.

(a) See R. S. O. 1897 c. 68, s. 6 (2).

(*Formal parts: see No. 123.*)

1. The plaintiff is
2. The defendant is

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Claim for libel
in a letter.

3. The defendant falsely and maliciously wrote and published of the plaintiff in the form of a letter addressed and sent by the defendant to one *A. B.* bearing date the day of , 19 , the words following, that is to say:—

“He took advantage of his right of entry into the Club to carry off from the cloak room an overcoat and pair of gauntlets,”] meaning thereby that [the plaintiff feloniously stole from a room in the Club to which the plaintiff had right of entry as a visitor, an overcoat and pair of gauntlets.]

4. By reason of the premises, the plaintiff has been greatly injured in his character and reputation.

The plaintiff claims \$ damages and costs.

(*Formal parts: see No. 123.*)

191

1. The plaintiff *A.B.* is, &c., and the plaintiff *C.B.* is his Claim for
slander of wife
wife.

2. The defendant is, &c.

3. On the day of , 19 , the defendant in the presence of one *A.B.* and one *C.D.* in a conversation with them falsely and maliciously spoke and published of the plaintiff *C.B.* the words following, that is to say (*stating them*) meaning thereby that (*innuendo*).

4. In consequence of the speaking and publishing of the said words the plaintiff *C.B.* was injured in [her character and reputation and lost the association, hospitality and friendship of several friends, viz., (*enumerating them*), and others, her relations and friends].

Or (*where the words spoken are not actionable in themselves but have caused special damage*). In consequence of the speaking and publishing of the said words the plaintiff, *C.B.* (*state the special damage*).

(*Any special damage which the husband has sustained by the slander may be added*).

192*(Formal parts: see No. 125.)*

Defences to
action for libel
Denial of pub-
lication.
Denial of
meaning im-
puted.

1. The defendants deny that they published the words alleged in paragraph of the statement of claim, or that if so published they were published with the sense or meaning alleged, or with any other defamatory or actionable sense or meaning.

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Denial that
words referred
to plaintiff.

The said words did not refer to the plaintiff.

194

Denial that
the words had
reference to
the plaintiff's
business.

The said words did not refer to the plaintiff's said trade or business or to the plaintiff in relation thereto.

195

Privilege.

The defendants further say that if it be proved that they did publish the words set out in paragraph of the statement of claim, they did so under the circumstances following (*set out circumstances raising the privilege*) and the defendants acted in good faith in such publication (if any such publication be proved) reasonably and in good faith, believing the same to be true and acted in the manner aforesaid without malice, and the publication complained of was and is a privileged communication.

Privilege (libel
by letter).

The letters complained of in the statement of claim were written by the defendant without malice and in the belief that they were true, and under the circumstances following [*stating the circumstances, e.g., in answer to certain inquiries made of the defendant by (the person to whom the letters were addressed)*] with respect to the character of the plaintiff, who had before then been given employment by the defendant as book-keeper, and was then seeking to obtain like employment from the said].

196

Fair report of
proceedings
(in Parlia-
ment).

The words complained of in paragraph of the statement of claim, are a portion of a report of the proceedings in Parliament published in the defendants' newspaper on the day of , 19 , and the same are a fair and accurate

report of the proceedings of the House of Commons of Canada (*or as may be the case*) on the preceding evening, and were published by the defendants *bonâ fide* and without malice.

2. Such report was published by the defendants *bonâ fide* without malice, and for the public benefit, and in the usual course of the defendants' business and duty as public journalists, and was and is a full, correct, fair and honest report of proceedings of public interest.

The words complained of in the paragraph of the statement of claim, were published by the defendants in the usual course, in their newspaper called the of the day of , 19 , and formed part of a report of the proceedings before [Police Magistrate of , or other Court of Justice], on the preceding day, and are a fair, accurate and impartial report without comments of the trial of the plaintiff before the said Police Magistrate on a charge of (*or as the case may be*).

2. (*The same as 2 in preceding form*).

The words complained of in paragraph of the statement of claim were part of an article in the defendants' newspaper published on the day of , 19 , and were a fair and *bonâ fide* comment on a matter of public [or public and national] interest, namely [*state the subject, e.g., upon the conduct of the plaintiff in his public capacity as Mayor of the City of in refusing to call a public meeting with reference to active assistance by Canada in the Transvaal War*], and the said words were published by the defendants without malice and the publication thereof was for the public benefit.

1. The alleged libel was contained in [the plaintiffs' newspaper called the , published daily], without actual malice and without gross negligence, and the defendants inserted [or offered to insert in the said newspaper, or made

(a) See R. S. O. 1897 c. 68, s. 9.

(b) See R. S. O. 1897 c. 68, s. 4.

or offered], a full apology for the said libel before the commencement of this action [*or as soon after the commencement of this action as there was an opportunity of doing so, the action having been commenced before there was an opportunity of making (or offering) such apology*].

2. (*Payment into Court. See No. 201.*)

200

Apology. (a)

1. The alleged libel contained in a public newspaper called the _____, published by the defendants daily [*or at intervals not exceeding (or exceeding) one week*], and was inserted in such newspaper without actual malice and without gross negligence, and before [*or at the earliest opportunity after*] the commencement of this action the defendants inserted in such newspaper a full apology for the said libel [*or where the newspaper is ordinarily published at intervals exceeding one week offered to publish a full apology for the said libel in any newspaper to be selected by the plaintiffs*] according to the Statute in such case made and provided.

201

Payment into court. (b)

2. The defendant brings [*or has paid*] into Court \$ _____, and says that that sum is sufficient to satisfy the plaintiff's claim [*or the plaintiff's claim made in the _____ paragraphs of the statement of claim*].

202

Fair report of public meeting. (c)

The words complained of in the _____ paragraph of the statement of claim, were spoken and published by the defendant's newspaper, called the _____, of the proceedings of a public meeting within the meaning of section 8 of chapter 68 of the Revised Statutes of Ontario, and the said report was fair and accurate, and published without malice, and the publication of the matter complained of was for the public benefit.

203

Absolute privilege.

The words complained of in the _____ paragraph of the statement of claim, were spoken and published by the defendant [in the course of his examination as a witness on oath at

(a) See R. S. O. 1897 c. 68, s. 6.
 (b) See Ib. s. 7 and Rule 419.
 (c) See Ib. s. 8.

the trial of a certain action in the High Court of Justice Witness.
 of , on , tried by the Honourable
 Mr. Justice at .

Or, were spoken and published by the defendant in the Advocate. (d)
 course of the proceedings and in the performance of the de-
 fendant's duty as a barrister and counsel for one A. B. the
 defendant in a certain action in the High Court of Justice,
 namely the action of M. v. B. on the tried by the
 Honourable Mr. Justice at ; and the
 alleged words were spoken (if at all) while the defendant
 was engaged as such barrister and counsel in defending the
 said A. B., at the trial of said action, and in the capacity of
 such barrister and counsel and not otherwise.

Or, were spoken and published by the defendant in the Judge.
 course of his duty as one of Her Majesty's Justices of the
 High Court of Justice in the proceedings in a certain action
 being tried before the defendant, &c.]

204

The defendant says that the words complained of in the statement of claim, are true in substance and in fact.

Justification
 (where alleged
 libel or slander
 is a specific
 charge).

205

Before the publishing of the words complained of in the statement of claim [*here state the facts relied on as justification, as for instance, where the words complained of are "he is the person who took my horse" with the innuendo that the plaintiff had stolen the horse.* The plaintiff on the day of 19 , stole a horse belonging to the defendant from the defendant's farm at .]

Justification
 (where the al-
 leged libel or
 slander is not
 a specific
 charge).

206

The words complained of in the statement of claim were not spoken [*or published*] with the meaning alleged by the plaintiffs and the defendant further says (*here state the facts relied on as justifying the words in their natural sense.*)

Justification
 of the state-
 ments as true
 in their natu-
 ral meaning
 and denying
 the innuendo.

207

Claim for
slander.

(*Formal parts: see No. 123.*)

1. On or about the day of 19 , the defendant [before a number of people among whom were A.B. of , C.D. of , and E.F. of , the only ones known to the plaintiff, assembled about the door of an inn in street in the Village of ; or, in a conversation which he had with one A.B. and one C.D., or as the case may be,] falsely and maliciously spoke and published of the plaintiff, the words following, that is to say [*e.g.*, "He is a thief"].

2. The plaintiff has by reason of the premises been greatly injured in his credit and reputation. [*Any special damage should be stated with reasonable particularity, such as—*and the plaintiff also lost his situation as in the employ of].

The plaintiff claims, &c.

208

Claim for
slander of
plaintiff in re-
spect of his
business.

(*Formal parts: see No. 123.*)

1. The plaintiff is a carrying on business at in the county of .

2. The defendant is a

3. On or about the day of 19 , the defendant falsely and maliciously spoke and published of the plaintiff in relation to his said business as a [*state the slander alleged verbatim, and where the words are not in themselves actionable add the necessary innuendo, e.g., meaning thereby that the plaintiff, as the case may be.*]

SECTION XVI.—DETINUE.

209

Claim for de-
tention of
goods(detinue)

(*Formal parts: see No. 123.*)

1. The plaintiff is the owner and entitled to the possession of (*as the case may be, state with sufficient particularity the goods or property detained.*)

2. The defendant, although requested so to do, has refused and still refuses to deliver up the said goods to the plaintiff and unlawfully detains the same from him.

3. The value of the said (*goods*) is \$.

The plaintiff claims:

1. The return of the said (*goods*) or \$
their value.
 2. \$ damages for the detention of the
said (*goods*).
 3. His costs of this action.
-

(*Formal parts: see No. 125.*)

1. The said (*goods*) are not the property of the plaintiff. **210**

[*Or, the said (*goods*) were detained for a lien to which the defendant is entitled by reason of stating the circumstances shewing the right to the lien.*]

**Defences to
preceding
claim.**

SECTION XVII—DISTRESS.

(*Formal parts: see No. 123.*)

1. The plaintiff was tenant to the defendant of the house known as at a yearly rent of \$, payable monthly in equal payments of \$ on the first day of each month. **211**

**Claim for
wrongful dis-
tress.**

2. On or about the day of 19 , the de-
fendant [*where it is claimed that no rent was due or that the distress was for more than was due* alleging that a large sum was due from the plaintiff for arrears of rent as such tenant], wrongfully distrained on the demised premises, a quantity of (*goods*) of the plaintiff [being for months' arrears of rent—or where the right is claimed not to have been due for such alleged arrears,—where so, and on or about the day of 19 , wrongfully sold the said (*goods*) under such wrongful distress.] No rent due.

[3. The said distress was made under a warrant signed and given by the defendant A. to the defendant B. authorizing and directing the defendant B. to distrain the plaintiff's goods and chattels on the said demised premises, for the sum of \$ —add where the complaint is that no rent is due therein falsely alleged to be due to the defendant A. as arrears of rent.] Where bailiff
is also sued.

No rent due.

4. At the time of the delivery of the said warrant to the defendant *B.* no rent was due by the plaintiff to the defendant *A.*, and at no time thereafter during the proceedings complained of herein, was any rent due by the plaintiff to the said defendant *A.*

5. The value of the goods so distrained is \$

Tender of
rent.

[*Or*, 4. Afterwards, and on or about the day of 19 , whilst the defendant was in possession of the said goods under such distress and before the said goods had been impounded, the plaintiff tendered to the defendant, [*or*, to one *B.* the bailiff of the defendant] in satisfaction and discharge of the said arrears of rent and of the charges relating to the said distress, the sum of \$ being a sum sufficient to satisfy the same, and requested the defendant [*or* the said bailiff *or* defendant *B.*] to redeliver to the plaintiff the said goods.

5. The defendant [*or* the said bailiff *or* defendant *B.*] refused to accept and did not accept the said sum so tendered as aforesaid and refused to deliver and has not delivered to the plaintiff the said goods, but has sold the same.]

Breaking outer
door, etc.

[*Or*, 4. The defendant *B.* upon receiving the said warrant proceeded to, and forcibly entered the plaintiff's house by breaking open the outer door thereof and wrongfully distrained therein certain goods and chattels belonging to the plaintiff, including [*where privileged goods are distrained, specify any goods privileged from distress, such as fixtures, which said* were affixed to the soil and have been greatly injured and some of them destroyed or rendered useless by the removal thereof, giving any further particulars necessary.]

Distraining
goods privi-
leged from dis-
tress.

Second dis-
tress for same
rent.

[*Or*, 4. At the time of the making of the said distress there were in the said house, goods of the plaintiff liable to be distrained of more than sufficient value to have satisfied the said arrears of rent and the charges of a distress for the same and of the appraisement and sale thereof, and the defendant could then have distrained to satisfy the same.

5. The defendant afterwards and on the day of 19 , wrongfully made a second distress on certain goods and chattels belonging to the plaintiff in the said house for the same arrears of rent for which the first mentioned distress was made as above stated, and for the charges of such second distress.]

[Or, 4. The defendant *B.* upon receiving the said warrant proceeded to the plaintiff's house, and entered the same at about the hour of eleven o'clock in the evening, and wrongfully distrained therein divers goods and chattels belonging to the plaintiff of the value of \$ which the said defendant then removed, and the same were afterwards sold by the defendant *A.*]

Distress at an unlawful hour.

[Or, 4. That defendant *B.* on receiving the said warrant proceeded to the demised premises and entering thereon, wrongfully distrained therein horses being beasts of the plough wherewith the plaintiff tilled the said lands, and ten sheep belonging to the plaintiff.

Distress of beasts of the plough, etc.

5. There were then upon the said lands other goods and chattels of the plaintiff not being beasts of the plough or sheep, liable to distress, and sufficient to satisfy the said arrears of rent, and the charges of a distress for the same and or appraisement and sale thereof, which the defendant might then have distrained for the said arrears and charges.]

[6. By reason of the premises and under and by virtue of the Statute in such case made and provided, the plaintiff claims to recover from the defendant [or the defendant *A.*] double the value of the said goods so distrained and sold as aforesaid.]

Where double value claimed under R.S.O., 1897, c. 342, s. 18. (a)

(Formal parts: see No. 123.)

1 and 2. (As in No. 211).

3. The said goods so distrained were of much greater value than the amount of said arrears of rent and of the costs of the said distress, the value of the same being about \$.

212

Claim for excessive distress.

4. The defendant might easily have distrained a portion of the said goods of sufficient value to satisfy the said arrears of rent and costs of distress.

(Formal parts: see No. 123.)

1 and 2. (See Form 211.)

3. The defendant on or about the day of 19 sold the said (*goods*) towards satisfaction of the said arrears and of the costs of the distress, appraisement and sale of the .

213

Claim for selling without five days' notice of distress.

(a) R. S. O. 1897, c. 342, s. 16.

said (*goods*) without any notice of the said distress having been given to the plaintiff or left on the demised premises five days before the sale of the said goods, contrary to the Statute in such case made and provided (*a*).

4. In consequence of the matters aforesaid the plaintiff has incurred (*state special damage*.)

214

Claim for selling without appraisalment.

(*Formal parts: see No. 123.*)

1 and 2. (*See Form 211.*)

3. The defendant afterwards sold the said goods to satisfy the said arrears of rent and costs of distress, and of the sale of the said goods, without having caused any appraisalment of the said goods to have been made by two sworn appraisers, contrary to the Statute in such case made and provided (*a*).

4. In consequence of the matters aforesaid, the plaintiff incurred (*state special damage*.)

215

Claim for not selling for the best price.

(*Formal parts: see No. 123.*)

1 and 2. (*See Form 211.*)

3. The defendant afterwards sold the said goods to satisfy the said arrears of rent and costs of distress and of the appraisalment and sale of the said goods, and at such sale the sum of \$300 was realized, which, after satisfying the arrears of rent and costs of distress, appraisalment and sale, left a balance of \$20 still payable for rent [*or* a balance of \$20 as the overplus which the defendant paid over to the plaintiff].

4. The defendant did not sell the said goods for the best price that could be gotten for the same but on the contrary sold the same at a sacrifice, at a price greatly below the real value of the said (*goods*) contrary to the Statute in such case made and provided (*a*).

5. [The said goods should have been sold for at least the sum of \$400, whereas the same only realized the sum of \$300, at the said sale by the defendant, whereby the plaintiff lost the sum of \$80, which he should have received over and above

the amount which he has already received from the defendant as a balance after the satisfaction of arrears of rent and costs of distress.]

SECTION XVIII.—EQUITABLE EXECUTION.

(*Formal parts: see No. 123.*)

216

Claim by judgment creditor to obtain equitable execution against his debtor.

1. The plaintiff, on the 10th day of April, A.D. 19 , by the judgment of this Honourable Court, recovered against the defendant \$362 for damages, together with \$84.90 for his costs of suit, which said judgment is still in force and unsatisfied.

2. On the said 10th day of April, the plaintiff sued out on the said judgment a writ of *fiery facias* against the goods and chattels and lands and tenements of the said defendant, and the same was duly indorsed with a direction to the Sheriff of the County of to levy the said sum of \$362 damages, and the said sum of \$84.90, taxed costs, and also \$6 for the writ, with interest from the said 10th day of April, together with his own fees, poundage, and incidental expenses; and the said writ so indorsed was duly delivered to the said Sheriff on the said 10th day of April, to be executed.

3. The said writ is now in the hands of the said Sheriff for execution, and the said judgment has not been satisfied either in whole or in part.

4. The said Sheriff was and is unable to execute the said writ, the defendant not having any goods or chattels, or any lands which can be seized or attached by him under the said writ or otherwise.

5. The defendant has contracted to purchase from the Crown a certain parcel of land known as (*describing land*) and has paid part of the purchase money therefor, and upon payment of the balance of the said purchase money, which amounts to \$120 or thereabouts, he is entitled to obtain a grant from the Crown of the said lot.

6. The said defendant now is entitled to a valuable equitable interest in the said lands as purchaser thereof, as aforesaid, but the same cannot be levied upon by the said Sheriff under the said writ, or otherwise made available for the satisfaction of the said judgment or of any part thereof.

The plaintiff claims:

1. Payment by the defendant to the plaintiff of the amount due to him as aforesaid with the costs of this action.

2. And in default thereof a sale of the said equitable interest in such manner as to this Honourable Court may seem meet for the satisfaction of the plaintiff's claim and costs.

3. That in the event of a sale of the said lands the plaintiff may be allowed to pay up the arrears due to the Crown in respect of the said lands, and to add the amount which he may so pay to his said debt, and that the same may be ordered to be repaid to the plaintiff, out of the proceeds of such sale.

4. The costs of this action.

5. Such further and other relief as may seem meet and as the nature of the case may require.

SECTION XIX.—EXECUTORS AND ADMINISTRATORS.

217

Formal description of
Executor.

The plaintiff is the executor of the last will and testament of A.B. deceased.

Administrator

The plaintiff is the administrator of the [personal or real and personal] estate and effects which were of A.B. deceased [*where so*] with the last will and testament of the said A. B. annexed.

Administrator
de bonis non.

The plaintiff is the administrator of the [personal or real and personal] estate and effects which were of A.B. deceased left unadministered [by *C.D.* and *E. F.* now respectively deceased who were the executors of the last will and testament of the said *A.B.*, or by *G.H.*, now deceased who was the administrator of the (personal or real and personal) estate and effects of the said *A.B.*]

218

Defence of
plene administravit.

The defendant has fully administered all the estate and effects of the said A.B., which have ever come to the hands of the defendant to be administered, and the defendant had not at the commencement of this action, nor has he since had, nor has he now any such estate or effects.

219

The defendant has fully administered all the estate and effects of the said A.B. which have ever come to the hands of the defendant to be administered except estate and effects of the value of \$, and the defendant had not at the commencement of this action nor has he now any such estate or effects except the said estate and effects of the value aforesaid

Defence of
plene adminis-
travit præter.

SECTION XX.—FOREIGN JUDGMENT.

(*Formal parts: see No. 123.*)

220

1. On the day of 19 , the plaintiff in an action brought by him against the defendant in the Court (*giving its title*) of (*the foreign country*), being a Court duly constituted and held in accordance with the laws of (*the foreign country*) and having jurisdiction in respect of the said action, recovered a judgment against the defendant for the sum of for debt and for costs making together the sum of which is equivalent to \$ in Canadian currency and which by the said judgment the defendant was adjudged and ordered to pay to the plaintiff, but the defendant has not paid the same nor any part thereof.

Claim on
foreign judg-
ment.

2. The said judgment is still in force and unsatisfied.

SECTION XXI.—FRAUD.

(*Formal parts: see No. 123.*)

221

1. In or about March, 19 , the defendant caused to be inserted in the newspaper an advertisement in which he offered for sale the lease, fixtures, fittings, goodwill, and stock-in-trade of a baker's shop and business, and described the same as an increasing business, and doing twelve barrels a week. The advertisement directed application for particulars to be made to X.Y.

Claim for
damages
for having
fraudulently
induced plain-
tiff to enter
into contract.

2. The plaintiff having seen the advertisement applied to X.Y., who placed him in communication with the defendant, and negotiations ensued between the plaintiff and the defendant for the sale to the plaintiff of the defendant's bakery at with the lease, fixtures, fittings, stock-in-trade, and goodwill.

3. In the course of these negotiations the defendant repeatedly stated to the plaintiff that the business was a steadily increasing business, and that it was a business of more than twelve barrels a week.

4. On the 5th of April, 19 , the plaintiff, believing the said statement of the defendant to be true, agreed to purchase the said premises from the defendant, for \$2,000, and paid to him a deposit of \$300 in respect of the purchase.

5. On the 15th of April the purchase was completed, an assignment of the lease executed, and the balance of the purchase money paid. On the same day the plaintiff entered into possession.

6. The plaintiff soon afterwards discovered that at the time of the negotiations of the said purchase by him and of the said agreement, and of the completion thereof, the said business was and had long been a declining business; and at each of those times, and for a long time before, it had never been a business of more than four barrels a week. And the said premises were not of the value of \$2,000, or of any saleable value whatever.

7. The defendant made the false representations hereinbefore mentioned well knowing them to be false, and fraudulently, with the intention of inducing the plaintiff to make the said purchase on the faith of them.

The plaintiff claims \$ damages and his costs of this action.

(Formal parts: see No. 125.)

222
Defence to
foregoing
claim.

1. The defendant admits the allegations of paragraphs 1, 2, 3 and 4 of the statement of claim.

2. The defendant says that at the time when he made the representations mentioned in the 3rd paragraph of the statement of claim and throughout the whole of the transactions between the plaintiff and defendant, and down to the completion of the purchase and the relinquishment by the defendant of the said shop and business to the plaintiff, the said business was an increasing business, and was a business of over 12 barrels a week. And the defendant denies the allegations of the 6th paragraph of the statement of claim.

3. The defendant repeatedly during the negotiations told the plaintiff that he must not act upon any statement or repre-

sensation of his, but must ascertain for himself the extent and value of the said business. And the defendant handed to the plaintiff for this purpose the whole of his books, shewing fully and truthfully all the details of the said business, and from which the nature, extent, and value thereof could be fully seen, and those books were examined for that purpose by the plaintiff, and by an accountant on his behalf. And the plaintiff made the purchase in reliance upon his own judgment, and the result of his own inquiries and investigations and not upon any statement or representation whatever of the defendant.

(Formal parts: see No. 123.)

Between—*M.B.*

and

J. McC. and *L. McC.*

Plaintiff, **223** Claim by judgment creditor to set aside conveyance by his debtor as fraudulent, under R.S.O., cc. 147, 334.
Defendants.

1. On the 2nd day of September, in the year 19 , the plaintiff recovered a judgment against the defendant *J. McC.* in this Honourable Court for the sum of \$398.10.

2. On the 2nd day of January aforesaid, the plaintiff caused a writ of *fiery facias* against the goods and chattels and lands and tenements of the said defendant, *J. McC.*, to be issued upon the said judgment, which writ was placed in the hands of the Sheriff of the County of Lincoln, the County wherein the said last named defendant resided, and a return thereto has been made by the said Sheriff *nulla bona*, and the said writ still remains in the hands of the said Sheriff to be executed as against the lands of said defendant.

3. The said judgment remains wholly due and unsatisfied, and the defendants refuse to pay the same.

4. At the time the plaintiff commenced her said action the said defendants were joint tenants in and entitled to the equity of redemption in the following lands: (*Describe the lands*).

5. Shortly before the complainant recovered the said judgment, and on the 3rd day of November, in the year 19 , the defendant, *J. McC.*, conveyed, or purported to convey, to the defendant, *L. McC.*, who is his brother, all the undivided interest of him, the said defendant, *J. McC.*, of, in, or to the said land and premises, and the consideration expressed in the said deed was the sum of \$550, which deed has been regis-

tered in the Registry Office of the County of Lincoln, and the same now appears in the books of registry in the said Registry Office.

6. Although the conveyance in the fifth paragraph hereof purports to have been made for the valuable consideration of \$550, no consideration in fact passed from the said defendant, *L. McC.*, to the defendant *J. McC.*, but the conveyance was simply voluntary and void as against the plaintiff.

7. The said deed was and is fraudulent and void, as against the plaintiff, the same having been made as aforesaid, for the purpose of defeating and delaying the plaintiff, or of preferring the said defendant, *L. McC.*, and being in contravention of the provisions of the Revised Statutes of Ontario, (1897) chapter 334.

8. That since the making of the said deed, mentioned in the fifth paragraph hereof, and up to the present time, the said defendant, *J. McC.*, has remained in the possession, use, and occupation of the said premises with his brother, the said defendant, *L. McC.*, the same as he did prior to the said conveyance to his said brother, the defendant, *L. McC.*

9. The said Sheriff has been, and still is, prevented and hindered by the said deed or conveyance from executing the said writ against the lands of the said defendant, *J. McC.*, and unless the said deed is set aside the plaintiff will be unable to obtain the fruits of her said execution against the lands of the said last-named defendant.

10. That for the reasons aforesaid, the said deed is fraudulent and void as against the plaintiff, and ought to be set aside and cancelled.

The plaintiff claims:

1. That the said deed made to the said defendant, *L. McC.*, by the defendant, *J. McC.*, be declared to be fraudulent and void as against the plaintiff, and be set aside and ordered to be delivered up to be cancelled, and that the registration and registered duplicate thereof in like manner be ordered to be cancelled.

2. The costs of this action.

3. For the purposes aforesaid all proper directions to be given and accounts taken.

4. Such further and other relief as may be necessary.

(Formal parts: see No. 123.)

Between—*W.E.S.* and *A. McI.*

Plaintiffs, **224**
Another form.

and

R.G., *M.A.E.G.* and *R.L.*, Defendants.

1. The plaintiffs above named recovered a judgment in the County Court of the County of Wentworth, on the 12th day of September, A.D. 19 , against *R.G.*, a defendant hereto for \$347.99 damages and \$42.45 costs, and on the same day caused a writ of *fieri facias de bonis et terris* to be issued thereon, and placed in the hands of the Sheriff of Oxford, being the proper Sheriff in that behalf, indorsed to levy the above sums and four dollars for the writ and Sheriff's fees, poundages and incidental expenses out of the goods and lands of the said *R.G.*

2. A return of *nulla bona* was afterwards duly made to said writ by the said Sheriff.

3. And the said writ now remains in the hands of the said Sheriff of to be executed as against lands of the said *R.G.*

4. The said judgment remains wholly due and unsatisfied.

5. On or about the 5th day of September, A.D. 19 , the said *R.G.*, with the intent and design of defeating, delaying, and hindering the plaintiffs and his other creditors in the recovery of their debts, purchased the following property, viz.: (*describe lands*) with his own money, from one *G.F.*, and took the conveyance thereof with the intent aforesaid, in the name of *M.A.E.G.*, his wife, who became a party thereto for the purpose of assisting her said husband in his said intent and design, and without any consideration moving from her for the same.

6. By an indenture of bargain and sale by way of mortgage purporting to have been made on the 26th day of January, 19 , between the said *R.G.* and the said *M.A.E.G.* of the first part, and the defendant *R.L.* of the second part, the said *R.G.* and *M.A.E.G.* purported to convey the said Lot No. to the said *R.L.* in fee subject to a proviso to become void on payment of the sum of \$250, as therein mentioned.

7. The said indenture of mortgage was registered on the 30th day of the said month of January.

8. The said indenture of mortgage was made and executed by the said *R.G.* and *M.A.E.G.* with the intention and design

of defeating, delaying or hindering the plaintiffs and the other creditors of the said *R.G.* in the recovery of their said debts: the said *R.L.* advanced no money nor was there any consideration for the said mortgage: the said *R.L.* became a party thereto with the design and intention of aiding and assisting the said *R.G.* to defeat, delay or hinder the plaintiffs and his other creditors in recovering their debts.

The plaintiffs claim:

1. Payment of the amount of the said judgment together with interest thereon and the costs of this action: and in default thereof a sale of the said land and premises for the satisfaction thereof.

2. A declaration that the said conveyance to the said *M.A.E.G.* and the said indenture of mortgage are fraudulent and void as against the plaintiffs, and should be set aside or postponed to them.

3. That all proper directions may be given and accounts taken.

4. Such further and other relief as the circumstances of the case may require.

(*Formal parts: see No. 123.*)

225

Claim by a simple contract creditor to set aside fraudulent judgment and conveyance.

Between—*A.B.*, who sues as well on his own behalf as on behalf of all others, the creditors of the defendant *E.F.*,

Plaintiff,

and

C.D. and *E.F.*, Defendants.

1. The plaintiff is a merchant carrying on business in in the county of , and brings this action on behalf of himself and all others the creditors of the defendant *E.F.*

2. The defendant *E.F.* is and was at the date next herein-after mentioned, indebted to the plaintiff in the sum of dollars, for goods sold and delivered by the plaintiff to the said defendant, which said indebtedness still remains wholly unpaid and unsatisfied, and the plaintiff holds no security in respect thereof.

3. On and prior to the day of , the defendant *E.F.*, who then carried on business as a merchant in , was in insolvent circumstances and unable to

pay his debts in full; and the defendant *C.D.* was then well aware of the insolvent condition of the said *E.F.*, and of his inability to pay his said debts.

4. Prior to the said date the defendants entered into the fraudulent scheme and conspiracy of placing the assets of the defendant *E.F.* out of reach of his creditors, for the purpose of defeating, defrauding and delaying said creditors, the said scheme being that the defendant *C.D.* should enter an action in this Honourable Court against his co-defendant for an alleged indebtedness of dollars, and, with the consent of the said *E.F.*, obtain judgment at once thereon, and issue execution upon the said judgment, and under said execution sell the assets of the defendant *E.F.*, other than the lands hereinafter mentioned, and receive the proceeds of such sale, and that the defendant *E.F.* should also convey to his co-defendant *C.D.* the lands and premises hereinafter mentioned, for the pretended consideration of dollars. Fraudulent judgment.

5. In pursuance of said fraudulent scheme and conspiracy, the defendant *C.D.* commenced an action against his co-defendant in this Honourable Court on the day of , and on the day of obtained judgment in the said action against his co-defendant for the sum of dollars for debt, and dollars for costs of said action. Execution against the goods of the defendant *E.F.* was, on said day of , issued upon said judgment, and placed in the hands of the sheriff of the county of .

6. The said sheriff, under the said execution, has sold the goods and chattels of the defendant *E.F.*, and realized from such sale the full amount of said judgment debt.

7. The plaintiff alleges, and the fact was and is, that said judgment is fraudulent and collusive, and that the defendant *E.F.* was not at the time of the commencement of said action, nor at the time of obtaining said judgment, indebted to his co-defendant.

8. In further pursuance of said fraudulent scheme and conspiracy, the defendant *C.D.*, by deed bearing date the day of , and executed on or about the date thereof, conveyed to his co-defendant the following lands and premises then owned by the defendant *E.F.*, and being (*describing them*). Fraudulent conveyance.

9. The plaintiff alleges, and the fact was and is, that no consideration was paid by the said *C.D.*, or received by the said *E.F.* for said conveyance, but the same was executed as

aforesaid for the purpose of defeating, defrauding and delaying the creditors of the defendant *E.F.*

10. At and prior to the transactions aforesaid the defendant *E.F.* was and still is indebted to creditors other than the plaintiff in large amounts.

1. The plaintiff claims judgment for the said sum of \$ and his costs of this action.

2. A declaration that the said judgment and conveyance are null and void as against the plaintiff, and the said other creditors of the defendant *E.F.*

3. An order that the defendant *C.D.* do account in respect of the moneys which he may have received under the said execution.

4. A sale of the said lands under the direction of this Honourable Court, and that the proceeds, after payment of the costs of this suit, may be applied in payment of the claims of the plaintiff and the other creditors of the defendant *E.F.*

5. The costs of this action.

6. Such further and other relief as may be deemed proper.

7. The order and injunction of this Court restraining the defendant *C.D.*, his servants and agents, from taking or receiving the proceeds of the sale by the said Sheriff, or any part thereof.

(*Formal parts: see No. 123.*)

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Defence of
the defendant
C.D. to fore-
going claim.

1. The defendant *E.F.*, being justly and truly indebted to this defendant in the sum of \$, this defendant caused an action to be instituted in this Honourable Court, for the recovery of the said amount, and such proceedings were thereupon had that this defendant recovered against the defendant *E.F.* judgment and execution for the amount so justly due, and his costs of the said action.

2. This defendant says that he purchased the lands and premises in the statement of claim mentioned, from the defendant *E.F.* for, and in consideration of the sum of \$, which he duly paid, and obtained a conveyance from the defendant *E.F.* of the said lands, and this defendant claims that he

was and is a *bonâ fide* purchaser for valuable consideration of the said lands.

3. This defendant says, that before the plaintiff had commenced this action, the said lands had been conveyed to this defendant, and the conveyance thereof had been duly registered in the Registry Office for the County of _____, and the consideration therefor paid without notice or knowledge of the plaintiff's claim, and this defendant claims the benefit of the Registry Acts in force in this Province.

4. This defendant denies the allegations of fraud and conspiracy in the plaintiff's statement of claim set forth.

5. Prior to the commencement of this action, or before notice thereof was given to, or received by this defendant, or the Sheriff of the County of _____, in whose hands were lodged the writs of execution, issued on the judgment recovered by this defendant, the said Sheriff did, under and by virtue of said writs, sell goods and chattels of the defendant *E.F.* to the amount of \$ _____, and received the amount, and paid a portion thereof to this defendant, and this defendant says, that under these circumstances, the plaintiff's remedy, if any he ever had, in respect to the said goods and chattels (which this defendant denies) no longer exists, and this defendant submits that by his delay and acquiescence the plaintiff has precluded himself from now calling in question the said judgment of this defendant.

[Formal parts: see No. 123.]

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1. This defendant says that he was justly and truly indebted to the defendant *C.D.* in the sum of \$ _____, and the said defendant *C.D.* caused an action to be instituted in this Honourable Court against him for the recovery of the said amount, and such proceedings were thereupon had that the defendant *C.D.* recovered against this defendant judgment and execution for the amount so justly due and his costs of the said action.

Defence of the
defendant
E.F. to claim
No. 225.

2. This defendant says that he sold the lands and premises in the statement of claim mentioned to the defendant *C.D.* for and in consideration of the sum of \$ _____, which said sum was paid by defendant *C.D.* to him, and thereupon a conveyance was made by this defendant to the defendant *C.D.* of the said lands, the said defendant *C.D.* being a *bonâ fide* purchaser for valuable consideration of the said lands.

3. This defendant denies the allegations of fraud and conspiracy in the plaintiff's statement of claim set forth.

(Formal parts: see No. 123.)

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Claim by assignee to set aside deed as fraudulent and void against creditors.

Between—*J.J.M.*

Plaintiff

and

D.V.S., R.M., H.C. and E.S., an
infant under the age of twenty-one
years Defendants.

1. The plaintiff is assignee of the estate and effects of *T.O.S.*, under an assignment for the benefit of creditors.

2. The said *T.O.S.* carried on business as a merchant, at the Village of Princeton, in the County of Oxford, previous to and on the 2nd day of March, A.D. 19 , and he was then indebted in the sum of \$4,100 and upwards to various unsecured business and other creditors, and such debts still subsist, and are unpaid, and he was, and is now, also indebted in \$2,500, secured by mortgage on the farm then belonging to him hereinafter mentioned.

3. In the said month of March, and for some time previously thereto, and at the time of the execution by him of the indenture of the 2nd March, A.D. 19 , hereinafter mentioned, the stock-in-trade, and all the property and assets of the said *T.O.S.*, of every kind, except the farm hereinafter particularly mentioned, did not exceed in value the sum of \$1,400, the said farm was of the value of about \$2,000 over and above all incumbrances by mortgage, and the said assets then were, and have ever since remained, insufficient for the payment of the debts of the said *T.O.S.*, and he then was insolvent.

4. While the affairs of the said *T.O.S.* were in the position hereinbefore stated, an indenture, dated the 2nd March, A.D. 19 , expressed to be made between the said T. O. S. of the first part, and the defendants, *R.M.* and *H.C.*, therein described as both of the City of Hamilton, in the County of Wentworth, Solicitors, of the second part, was prepared, and the same was executed by the said *T.O.S.*, *R.M.* and *H.C.* whereby, after reciting that the said *T.O.S.* was desirous of making a provision for the support and maintenance of his said wife during her life, and the support, maintenance, and education of their children and that the said indenture was

made for the said consideration, and the further sum of \$1, the said *T.O.S.* did convey unto the said defendants, *R.M.* and *H.C.*, hereafter called the trustees in fee as joint tenants his said farm, which is described as follows, that is to say (*describe the lands*), upon trust, to collect and get in the rents thereof, and pay the same to the said wife of the said *T.O.S.*, for the support of herself and the said children during the life of the said wife, and after his death to the duly appointed guardian of the children till they should respectively attain the age of twenty-one years. But if the said wife should live till the said children should attain the age of twenty-one years, the said defendants, the trustees, are empowered to pay such portion of the said rents to the said defendant, *D.V.S.*, as they shall see fit, and after the death of the said *D.V.S.*, but not before the youngest child shall become of age, then, in trust, to sell the said lands and divide the proceeds equally, or to divide the said lands equally, between the said children, with power to the said defendants, the trustees, to make advances for the education of any of the said children out of his or her presumptive share, it being declared by the said deed that the share of any child or children dying and leaving issue, shall belong to such issue, but if any child or children should die without issue, his or her share shall be equally divided amongst the survivors; and it is by the said indenture further provided that the defendants, the trustees, may at any time sell the said lands, invest the proceeds thereof, and apply the income and proceeds in the manner hereinbefore set forth, and that if the children of the said *T.O.S.*, by his said wife, should die without lawful issue, the said lands or the proceeds thereof should, after the death of the said *D.V.S.*, revert and belong to the said *T.O.S.* The said indenture contains no covenant or agreements of any kind from the said trustees to the said *T.O.S.*, or from him to them. The said deed was executed upon the day of the date thereof, or within four days thereafter; the lands thereby conveyed formed by far the largest part of the property of the said *T.O.S.*, and the residue of his property was insufficient for the payment of his debts.

5. The defendants, the trustees, before and at the time of the execution of the said indenture, knew that the defendant was indebted in a sum exceeding \$1,000 in respect of a private debt over and above all his business debts, and that he had no property of any kind except the said farm and his stock-in-trade, and the assets of his said business; and the said deed was executed by the said *T.O.S.* with intent to hinder, defeat and delay his creditors in their remedies against him.

6. At the time of the execution of the said deed, several of the debts then and still owing by the said *T.O.S.* were past due, and he was without the means for payment thereof.

7. The said *T.O.S.* and the defendant *D.V.S.* had been married over eleven years prior to the execution of the said indenture, and had married without any settlement or agreement for a settlement whatever, and they had issue of their said marriage three children, the defendants (*naming them*), the eldest of whom is under ten years of age. The said infant defendants reside with the said *D.V.S.*, at the Township of Saltfleet, in the County of Wentworth.

8. The said indenture was made and executed as aforesaid, without any money or valuable consideration whatever, and hinders, defeats and delays the creditors of the said *T.O.S.*, in their remedies against him and his estate; and the plaintiff submits that the said indenture is, under the circumstances aforesaid, voluntary and fraudulent and void as against the plaintiff as assignee as aforesaid and the creditors of the said *T.O.S.*

9. The defendants, the trustees, are in receipt of the rents and profits of the said farm, and have paid some thereof to the said *D.V.S.*, and have some thereof in their hands.

The plaintiff claims:

1. That the said indenture of the 2nd day of March, A.D. 19 , may be declared voluntary, and fraudulent and void as against the plaintiff as such assignee as aforesaid, and the creditors of said *T.O.S.*, and may be set aside accordingly.

2. That the plaintiff as such assignee as aforesaid may be declared to be entitled to the said lands, and that the same may be vested in him for all the estate, right, title and interest of the defendants therein and thereto, and that the trustees may be directed to pay over to him all rents received or to be received from the said premises.

3. That the said defendants, or some of them, may be ordered to pay the costs of this action.

4. That all necessary accounts may be taken and directions given as may be necessary.

5. That the plaintiff may have such further and other relief as the nature of the case may require.

(*Formal parts: see No. 123.*)

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1. Previously to and in the year 19 , the defendants were carrying on a small business in co-partnership as manufacturers of lubricating oil and grease at St. Catharines, Ontario, under the style or firm of "*H. and H.*," and the defendant *H.F.H.* claimed to have discovered certain processes much less expensive than those commonly in use whereby the crude oil of Canada might be manufactured into carbon or burning oils free from offensive smells, and superior in all respects to the carbon and oils produced from the crude oil of the United States, and he also claimed to have discovered a process whereby the residuum or tar which remains after the crude oil has been refined for the purpose of extracting carbon oils therefrom could be utilized for the manufacture of a lubricating oil having no equal either in Europe or America. The defendant *E.H.* was by virtue of the contract of co-partnership jointly interested with the defendant *H.F.H.* in all the said processes.

Claim by joint stock company to set aside secret fraudulent agreement entered into by defendants with promoter of company.

2. In the year 19 the defendants were desirous of forming a company for the purpose as, they alleged, of raising additional capital to enable them to extend their business and they entered into negotiations with a Mr. *T.H.*, of St. Clement's House, St. Clement's Lane, in the City of London, and after considerable correspondence the said *T.H.* undertook to form and organize such company upon certain terms which were embodied in the following agreement:—

"This agreement, made and entered into this 28th day of March, A.D. 19 , between *E.H.* and *H.H.*, trading under the firm of *H. and H.*, as manufacturers of lubricating oils and grease at St. Catharines, Ontario, Canada, of the one part, and *T.H.*, of Saint Clement's House, Saint Clement's Lane, in the City of London, of the other part, witnesseth: Whereas the said *H. and H.* have applied, by letter to the said *T.H.*, to form a company for the purpose of purchasing their patents, processes and inventions for and in the manufacture of lubricating oils and grease upon the following terms and conditions, to wit: The capital stock of the said company to be £100,000 or £150,000 sterling as the said *T.H.* may deem expedient. The said company to pay the said *H. and H.* from the said capital stock of said company the sum of £12,000 sterling in cash and the further sum of £38,000 sterling in paid-up shares in said company, the same to be paid to said *H. and H.* upon their transfer to the said company for

the said company's sole use and benefit of all their patents, processes and inventions for the manufacture of carbon, paraffine and lubricating oils and grease. The said *H. and H.* hereby agree upon such payment as above specified to assign and transfer and sell to the said company all their patents, processes and inventions for the manufacture of the oils and grease aforesaid for their the said company's sole use and benefit. And the said *H. and H.* give to the said *T.H.* full power and authority to form such company as aforesaid upon the terms and conditions above named, and to do all that may be necessary in their name for the perfecting and establishing such company. And they do further agree to execute any documents, agreements or deeds which may be necessary for the purpose of carrying out this agreement or any of the details thereof. The said *H. and H.* further agree to pay to the said *T.H.* for his services and expenditure the sum of £5,000 sterling cash and the further sum of £10,000 sterling in paid-up shares in the said company; the £5,000 sterling to be so paid to said *T.H.*, to be taken from the cash bonus of £12,000 sterling paid by the said company to said *H. and H.*; the £10,000 sterling in paid-up shares of the said company to be so paid to the said *T.H.*, to be taken from the £38,000 sterling of paid-up shares paid to the said *H. and H.* by the said company for the bonus on the sale to the said company of their patents, processes and inventions. But in case the said *T.H.* shall fail in his undertaking, and shall not form such company upon the terms and in manner hereinbefore mentioned, and within the time hereinafter specified, then and in that case the said *H. and H.* shall not pay the said *T.H.* anything for his services and expenditure. The said *T.H.* upon his part hereby agrees to organize and form such company upon the terms and conditions herein mentioned, and he the said *T.H.* further agrees to pay all the expenses thereby incurred and do all that is necessary to be done in bringing the enterprise promptly before the public, and use his utmost endeavours to bring the negotiations to a speedy issue. The said *T.H.* further agrees that the said *H. and H.* are to incur no liability of any kind or nature in the formation of the said company except for the payment to the said *T.H.* of said bonus as hereinbefore specified. And it is further agreed by the said *H. and H.* and by the said

T.H. that this contract shall remain in full force and effect until the first of April, A.D. 19 , and no longer."

3. The said agreement was duly signed and sealed by the defendants on their own behalf and by one *J.J.H.*, a son of the said *T.H.*, on behalf of the said *T.H.*

4. In pursuance of the said agreement the said *T.H.* induced several persons of standing and respectability to undertake to become directors of the company so to be formed by him, and early in the year 19 , a prospectus of the proposed company, with a capital of £150,000, in 30,000 shares of £5 each fully paid up, of which 13,000 only were to be offered to the public at par, was prepared and issued by the said *T.H.* and the defendant *H.F.H.* The names of the directors as set forth in the prospectus were as follows:—

Colonel *J.A.C.*; *C.J.F.*, Esquire; *T.H.*, Esquire; *F.L.*, Esquire; *W.T.*, Esquire.

5. The prospectus, after setting forth the valuable character of the improvements purported to have been effected by the processes of the defendants in the manufacture of carbon and lubricating oils, proceeded as follows:—

"Messrs. *H. and H.*, requiring additional capital to erect the necessary works and machinery and purchase the surplus stock of crude oil to enable them to meet the rapidly increasing demand for their lubricating and other oils, have agreed to assign to this company all their plant, patents, processes and inventions for the manufacture of Canadian and other oils for the sum of £50,000, of which amount they have stipulated to retain an interest in the company in paid-up shares to the extent of £38,000 and to continue in the management of the works, receiving in cash the sum of £12,000, only.

6. On the faith of the statements contained in the said prospectus, which is to be treated as if herein set forth at length, shares were applied for by the general public, and on or about the 23rd February, 19 , the plaintiff company was duly registered and incorporated under the Imperial Companies' Acts 1862 and 1867, having its registered office in England. The objects for which the company was established, as defined in its memorandum of association, were to purchase the patents, processes and inventions or other rights of the defendant *H.F.H.* for improvements in continuous distilling ap-

paratus for distilling petroleum and other kinds of oil, to work such patents, processes and inventions and to carry on business therein, to take out or purchase patents, to grant licenses to work patents in the United Kingdom and colonies and in other countries, to employ machinery, to purchase or lease or otherwise acquire and hold land and premises, to purchase or lease or otherwise acquire machinery; to purchase or hire or construct vessels, roads, railways, wharfs, landing-stages and other adjuncts for shipping; to purchase the business of any other company carrying on business similar to that of the plaintiff company, to buy and sell produce and materials; to sell or lease the company's patent rights, business, land and premises, or a part or portion thereof; to employ agents and labour, and to do all such other things as are incident or conducive to the attainment of the above objects.

7. The said agreement of the 28th March, 19 , was not noticed or referred to in the said prospectus, pursuant to the provisions of the Imperial Companies' Act, 1867, and was in fact concealed from the applicants for shares in the plaintiff company and from the public generally.

8. The number of shares which have been applied for on the faith of the said prospectus on the 24th March, 19 , when the first allotments took place, was 3,376, representing a nominal capital of £16,880, and all these were allotted. Fresh shares have since from time to time been issued, and the total amount subscribed for has now reached the sum of £29,000, the greater part of which has been fully paid up.

9. On the 12th September, 19 , letters patent for "Improvements in Continuous Distilling Apparatus for Distilling Petroleum and other Kinds of Oils, and in the Apparatus for performing the same," were granted by His Majesty to the said *T.H.* as a "communication" from the defendant *H.F.H.*, and on the 6th of April, 19 , the plaintiff company entered into an agreement with the defendants for the purchase from them of (amongst other things) the patent so granted. Such agreement was duly signed by the defendant *H.F.H.* on behalf of himself and the defendant *E.H.*, and was duly sealed with the common seal of the plaintiff company, whereby the plaintiff company agreed to buy from the defendants, "all inventions, improvements and processes, whether the subjects of a patent or not, patents and patent rights and privileges whether in Canada, Great Britain or elsewhere, of or belonging to or obtainable by the defendants or either of them, or in which they or either of them had any right or interest whatever (including certain patents granted to the said *H.F.H.* in the Do-

minion of Canada, dated the 5th day of May, 19 , and numbered 397, and the right or interest of the defendants in the patent taken out in and for Great Britain by the said Mr. *T.H.*, as a communication from the said *H.F.H.*, dated the 12th day of September, 19 , and numbered 2,458, and such special privileges as are granted in countries where no patents are obtainable), for or relating to the distillation or manufacture of petroleum or other oils or grease or any like products, and all future inventions, improvements, processes (whether the subjects are capable of becoming the subjects of a patent or not), patents and patent rights and privileges which may be invented or discovered by or belong to or be obtainable by the defendants or either of them, including such special privileges as are granted in countries where no patents are obtainable. The defendants also thereby sold to the company all their right or the right of either of them to apply for or obtain extensions or renewals of any of the patents and patent rights, the subjects of the purchase, and also all their plant, stock-in-trade, tools, utensils, and chattels in or about their works in Canada, or used in their business on the 25th day of February, 19 .

10. The consideration for the purchase was twelve thousand pounds in cash, which was to be paid by the plaintiff company to the defendants on the execution of the necessary assignments and assurances for vesting the property comprised in the purchase, in the plaintiff company and also 7,600 fully paid-up shares of £5 each in the company which were allotted to the defendants.

11. In ignorance of the said agreement of the 28th of March, 19 ; the plaintiff company early in the month of May, 19 , paid the sum of £5,100 cash, part of the sum of £12,000 specified in the said agreement of the 6th of April, 19 , to the defendant *H.F.H.* on account of himself and the defendant *E.H.*, and allotted to the said defendants, or to their nominees 1,800 fully paid-up shares in the plaintiff company, and of such shares, certificates of which were duly issued, 1,500 now stand in the joint names of the defendants in the register of the plaintiff company. On the 13th of the said month of May, £2,125, being part of the said sum of £5,100 and certificates of 200 shares, being part of the said 1,800 shares, were paid and given to the said *T.H.* in part pursuance of the said agreement of the 28th of March, 19 .

12. Of the 200 shares so as aforesaid given to the said *T.H.*, 50 were registered in his name and have been retained by him, but the remaining 150 were distributed by him

amongst his co-directors in manner following (that is to say) :—50 were given to the said Colonel *J.A.C.*, 50 to the said *C.J.F.*, and 50 to the said *W.T.*, who died in September, 19 . The said Colonel *C.* and *C.J.F.* have since abandoned all claim to any beneficial interest in their said respective 50 shares in favour of the plaintiff company, but the executor of the said *W.T.* has not thought himself at liberty to take a similar step in respect of his testator's shares. Accordingly on the 14th February, 19 , the plaintiff company commenced an action in this Honourable Court against the said *T.H.*, and the executor of the said *W.T.*, for the purpose (amongst other things) of recovering as well the said 50 shares retained by the said *T.H.*, and the 50 shares retained by the said executor of the said *W.T.*, as the sum of £2,125, part of the said sum of £5,100 so as aforesaid paid to the said *T.H.*, on the ground that the same shares and cash respectively were improperly received and in fraud of the plaintiff company. Sufficient time has not elapsed since the institution of the said action to enable it to be brought to trial.

13. The directors of the plaintiff company, other than the said *T.H.*, were induced by the representations of the defendants or one of them, to believe that the whole of the cash and shares which constituted the purchase money for the said patents and processes was to be paid and delivered to the defendants for their absolute use; and if such directors other than *T.H.* had known that any part of such purchase money was to belong to the said *T.H.*, the common seal of the company would not have been affixed to the said agreement of the 8th of April, 19 .

14. Under the circumstances aforesaid, the plaintiff company claims that the said agreement of the 6th of April, 19 , was obtained by fraud and improper concealment on the part of the defendants or one of them, and that the same ought to be set aside by this Honourable Court, and that any moneys or shares paid or delivered thereunder to the defendants or either of them ought to be restored by them, the plaintiff company being willing and hereby offering to do all such acts or things as this Court may think proper to direct for the purpose of restoring to the defendants any property, rights or interests of the defendants that may be vested in the plaintiff company under the said agreement.

15. Both the defendants allege that they are entitled to certain moneys in respect of services rendered or disbursements made by them to or on behalf of the plaintiff company, and the defendant *H.F.H.* alleges that he is entitled to some

salary as manufacturing manager, but the plaintiff company claims that no such moneys or salary are due, and that, at all events, none can be recovered until the claims of the plaintiff company upon the defendants in respect of the other matters herein mentioned shall have been ascertained and settled.

The plaintiff company claims:

1. A declaration that the said agreement of the 6th of April, 19 , was fraudulent and void as against the plaintiff company, and a direction that the same may be set aside and delivered up to be cancelled, and that the defendants may be ordered to repay to the plaintiff company the sum of £5,100 so paid to them as aforesaid, or so much thereof as shall not be recovered from the said *T.H.* in the said action instituted against him, with interest from the date of such payment.

2. A direction that the defendants re-deliver to the plaintiff company the certificates of the said 1,800 shares so handed to them as aforesaid, or so many of them as are now in their possession or control, and that the plaintiff company be at liberty to cancel the 1,500 shares now registered in the names of the defendants, and to remove their names from the company's share register in respect of such shares.

3. Their costs of this action.

4. Such further or other relief as the nature of the case may require.

(*Formal parts: see No. 123.*)

1. The defendant by a letter bearing date the day of 19 , signed by the defendant, fraudulently represented to the plaintiff that *T.W.* then held a responsible situation, and was then in good circumstances, and might safely be trusted with goods on credit.

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Claim for fraudulently representing that a third person might be given credit.

2. The said *T.W.* did not then hold a responsible situation, and was not then in good circumstances, and could not then be safely trusted with goods on credit, as the defendant then well knew.

3. The defendant, as he intended, did, by so representing, induce the plaintiff to sell and deliver to the said *T.W.* goods [namely] on credit.

4. In consequence of the premises the plaintiff lost the price of the said goods, amounting to the sum of \$, and incurred expense amounting to \$, in endeavouring to recover the same.

The plaintiff claims \$ damages and the costs of this action.

SECTION XXII—GUARANTY.

(*Formal parts: see No. 123.*)

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Claim on a
guaranty. (a)

1. The plaintiffs are brewers, carrying on their business at Guelph, under the firm name of *X. Y. & Co.*

2. In the month of March, 19 , *M.N.* was desirous of entering into the employment of the plaintiffs as a traveller and collector, and it was agreed between the plaintiffs and the defendants and *M.N.* that the plaintiffs should employ *M.N.* upon the defendants entering into the guaranty hereinafter mentioned.

3. An engagement in writing was accordingly made and entered into, on or about the 30th March, 19 , between the plaintiffs and the defendant, whereby, in consideration that the plaintiffs would employ *M.N.* as their collector, the defendants agreed that they would be answerable for the due accounting by *M.N.* to the plaintiffs for, and the due payment over by him to the plaintiffs of all moneys which he should receive on their behalf as their collector.

4. The plaintiffs employed *M.N.* as their collector accordingly, and he entered upon the duties of such employment, and continued therein down to the 31st September, 19 .

5. At various times between the 29th of September and the 25th of December, 19 , *M.N.* received on behalf of the plaintiffs and as their collector, sums of money from debtors of the plaintiffs, amounting in the whole to the sum of \$3,400; and of this amount *M.N.* neglected to account for or pay over to the plaintiffs sums amounting in the whole to \$908, and appropriated the last mentioned sums to his own use.

6. The defendants have not paid the last mentioned sums, or any part thereof, to the plaintiffs.

The plaintiffs claim:—

1. \$ damages.

2. Their costs of this action.

(a) See Con. Rules, 1888; Form 73.

(*Formal parts: see No. 123.*)

3. In the month of May, 1900, one *E.F.* applied to the plaintiff to be supplied with certain goods hereinafter mentioned and being unable to pay for the same, the defendant guaranteed to the plaintiff payment thereof under a guaranty in writing, as follows:—

“3rd November, 19 . Sir,—In consideration of your supplying to *E.F.* 60 tons of coal at \$6.00 per ton, I undertake to see you paid. Yours, &c.

C.D. (Defendant).

To Mr. (Plaintiff).”

4. The plaintiff thereupon supplied the said *E.F.* with the said 60 tons of coal at \$6.00 per ton, but neither the said *E.F.* nor the defendant has paid for the same.

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Claim on a guaranty for the price of goods.

SECTION XXIII.—HUSBAND AND WIFE.

The plaintiff [*or defendant*] is and at the time of the making of the contract herein was the wife of *A.B.* of, &c.

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Commencement of statement of claim by or against a married woman

(*Formal parts: see No. 123.*)

Between—*A.B.* and *C.B.* his wife, Plaintiffs,
and
The *D. E. Co.* Defendants.

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Commencement of claim.

1. The plaintiff *A.B.* is, &c., and the plaintiff *C.B.* is his wife.

2. The defendants are, &c.

3. The plaintiffs were lawfully driving in a buggy belonging to the plaintiff (*the husband*) upon the highway in street in the of when a heavy express waggon drawn by two horses and driven by one of the defendants' servants was driven violently against the plaintiffs' buggy which was overturned and the plaintiffs thrown out.

Claim for personal injuries to wife.

4. The plaintiff (*the husband*) was bruised (&c., giving particulars) and the plaintiff (*the wife*) had her right arm broken and was otherwise bruised and injured and the said buggy was broken (*giving details succinctly*).

5. The said collision was caused by the negligence of the driver of the said cart who was at the time drunk and incapable of exercising and did not exercise proper care in the management of the said waggon and horses.

6. By reason of the premises the plaintiff (*the wife*) suffered great pain and injury to her health and was for a long time [*or is permanently*] injured and incapacitated from attending to her household duties.

Claims on the part of the husband.

7. By reason also of the premises the plaintiff (*the husband*) was deprived of [and will lose] the comfort, society, assistance and services of his wife and has incurred [and will incur] expense for nursing and medical and other attendance of his wife. (*Where practicable particulars may be given.*)

(*Claims may be joined for the injuries to the husband and his buggy.*)

The plaintiffs claim \$ and their costs of this action.

(*Formal parts: see No. 123.*)

235

Another form of claim—
Damages for injury to the wife.

1. The plaintiff *C.B.* is, and was on the day of 19 , (*date of cause of action*) the wife of the plaintiff *A.B.*

2. On the of 19 , a van of the defendant's was being driven in a public street called street, , by one of the servants of the defendant in the course of his employment as such servant.

3. It was then so negligently (*state circumstances when practicable*) driven and managed by the said servant of the defendant, that it was driven with great force against the plaintiff *C.B.* who was then crossing the said street.

4. The right leg of the plaintiff *C.B.* was thereby broken, and she was in consequence obliged to remain in her bedroom for weeks, and she suffered much pain.

5. By reason of the premises, the plaintiff *A.B.* lost the benefit and comfort of the plaintiff *C.B.*'s society, and her assistance in the management of his house for weeks, and was put to an expense of \$ for medical attendance and was obliged to employ for weeks an additional servant at a cost of \$ (*or as the case may be*).

The plaintiff claims, &c. (*as in preceding form*).

(*Formal parts: see Nos. 123 and 234.*)

1. The defendant *C.D.* is and was on the day of
19 , the wife of the defendant *A.D.*

2. On the said day of 19 , the said *C.D.*
wrongfully [*state the wrong as in any other case, as for ex-*
ample, took possession of and converted to her own use, a
diamond ring belonging to the plaintiff of which she still
retains possession].

The plaintiff claims \$ damages and costs.

236

Claim against
a husband and
wife for a
wrong com-
mitted by the
wife during
coverture.

(*Formal parts: see No. 123.*)

1. *C.D.* is and was at the time hereinafter mentioned, the
wife of the plaintiff *A.D.*

2. On various occasions in the year 19 , the defendant
wrongfully and without the consent of the plaintiff enticed
away from the plaintiff his said wife, and procured her to
absent herself for long intervals from the house and society
of the plaintiff, and since the day of 19 , [the
plaintiff's said wife by such wrongful enticing and procure-
ment of the defendant, has been and is still absent from his
house and society.

Or, without the consent and against the will of the plain-
tiff, the defendant has received, harboured and detained the
said *C.D.* and refused to restore her to the plaintiff although
requested by the plaintiff so to do.]

3. The defendant was well aware that the said *C.D.* was
the wife of the plaintiff.

4. By reason of the said absence of his said wife the plain-
tiff has lost her society and services.

The plaintiff claims \$ damages and costs.

237

Claim by a
husband for
the enticing
away of his
wife.

(*Formal parts: see No. 123.*)

1. On the day of the plaintiff was married
to *L.R.*, daughter of the defendants, and the plaintiff and the
said *L.R.* lived happily together as husband and wife from
that time until the day of 19 .

238

Another form.
(a)

(a) See *Metcalfe v. Roberts*, 23 Ont. 130.

2. Between the two dates last mentioned the defendant *M.R.* made frequent visits to the plaintiff and his wife: and both defendants had frequent intercourse with the plaintiff's said wife.

3. The said defendants by misrepresentations, threats, and undue influence persuaded and induced the plaintiff's wife to leave the plaintiff and to cease cohabiting with him, and on or about the day of the defendant *M.R.* came to the plaintiff's house and assisted the plaintiff's wife in making preparation for her departure from the plaintiff, and on the said day of the defendant *W.R.*, accompanied by two other men who represented themselves to be constables, and whose services the defendants had procured for the occasion, came to the plaintiff's house and informed the plaintiff that they had come to take away the said *L.R.*, his wife, and threatened to use force, if the plaintiff offered any resistance to their so doing, and thereupon the said defendant *W.R.* and the said alleged constables carried off the plaintiff's wife to the house of the defendant *W.R.*, and the defendants have ever since wrongfully harboured the said plaintiff's wife, and the plaintiff has been deprived of her society and of cohabitation with her, and has suffered great loss and damage.

The plaintiff claims \$ damages and costs.

(*Formal parts: see No. 123.*)

239

Claim for
criminal con-
versation. (b)

1. The plaintiff was on the day of 19 , lawfully married to and is now the lawful husband of *C.D.*

2. The defendant on or about the of induced the said *C.D.* to leave the house of the plaintiff and to cease cohabiting with him, and thereupon to go and reside and commit adultery with him the said defendant, and the said *C.D.* has continued to reside with and to continue her adulterous intercourse with the defendant whereby the plaintiff has been deprived of the society of the said *C.D.* and cohabitation with her, and has suffered great loss and damage thereby, and has been put to great pain and mental suffering.

3. The plaintiff claims \$ damages, and costs.

(b) This action has in England been abolished by 20 & 21 V. c. 85, s. 59, but may still be brought in Ontario.

SECTION XXIV.—INFANTS.

(*Formal parts: see Nos. 31 and 123.*)

1. The plaintiff is an infant under the age of 21 years who
sues by *C.D.* of of in the County of
[farmer] his next friend.

240

Commence-
ment of state-
ment of claim.

(*Formal parts: see No. 123.*)

241

1. One *N.B.*, in his lifetime of the Town of Oakville, mari-
ner, the plaintiff's father, died on or about the day of
July, A.D. 19 , the owner in fee simple to his own use
and in possession of that certain parcel of land situate in the
(*describe land*).

Claim to de-
clare a deed
executed by
plaintiff, while
an infant, void,
and for a re-
conveyance.

2. By his last will and testament duly executed as by
law is required for the effectual devise of real estate in Ontario
bearing date on or about the 21st day of June, A.D. 19 ,
the said *N.B.* devised the said parcel of land to his wife *M.A.B.*
until the plaintiff should attain the age of twenty-one years,
or until his said wife should marry again, in trust for the
support and maintenance of his said wife, and of the plaintiff
until his wife should marry again, or the plaintiff should
attain the age of eighteen years.

3. In and by his said will the said *N.B.* further directed
that, in the event of his said wife marrying again, the said
parcel of land should be rented and managed by the executors
in the said will named for the plaintiff's benefit and support
in such manner as such executors should think proper, and he
thereby declared that the said parcel should become the sole
property of the plaintiff in fee simple when the plaintiff
should attain the age of eighteen years.

4. The said *N.B.*, shortly afterwards, made a codicil to his
said will, but he did not thereby or otherwise alter or revoke
the disposition hereinbefore stated of the said land before his
death.

5. The said *M.A.B.* married one *P.H.* in or about the year
19 , and the plaintiff, who was then an infant of the age of
four years, lived with her mother and the said *P.H.* thence-
forth until the making of the conveyance hereinafter men-
tioned, and afterwards.

6. The plaintiff attained the age of eighteen years on or about the 3rd day of December, 19 , and in the month of January following the said *P.H.* informed the plaintiff that he had sold the said parcel of land to the defendant and required the plaintiff and her mother to go to Hamilton to meet the defendant to carry out the sale.

7. Thereupon and on or about the 6th day of January, 19 , the said *P.H.* brought the plaintiff and her mother to Hamilton where the said *P.H.* and the defendant induced the plaintiff and her mother to execute a conveyance of the said parcel of land to the defendant, and such conveyance was accordingly in fact executed to the defendant by the plaintiff and her said mother, and the same was accordingly afterwards registered in the Registry Office for the County of Wentworth by the defendant.

8. The plaintiff executed the said deed under the coercion and at the request of the said *P.H.* and the defendant, and she was then an infant under the age of twenty-one years, and had no advice or assistance, and was ignorant of her rights in the premises.

9. The plaintiff received no benefit from the said sale or from the purchase money, but the said *P.H.* received the benefit thereof as was intended when the bargain was made between the said *P.H.* and the defendant.

10. The defendant immediately after the execution of the said conveyance entered into possession of the said premises and has continued in possession thereof, and in the receipt of the rents and profits thereof, ever since.

11. The plaintiff's mother died in April, 19 , and the plaintiff attained the age of twenty-one years in the month of December in the same year, and as soon after as she was properly advised of her rights she repudiated the said conveyance and notified the defendant that she did so, and she refused to be bound thereby, or to ratify or confirm the same.

12. The registration of the said deed forms a cloud on the plaintiff's title to the said parcel of land, and the plaintiff applied to the defendant before suit to execute, and tendered to him for that purpose a proper instrument to remove such cloud; but the defendant refused and still refuses to execute any such instrument or to deliver up possession of the said land to the plaintiff.

13. The defendant was well aware, when he took the said conveyance and entered into possession as aforesaid, of the

plaintiff's infancy, and the plaintiff submits that the defendant is accountable to her as a bailiff for the rents and profits of the said parcel of land since he took such possession.

14. The defendant threatens and intends to, and will, unless restrained by the order and injunction of this Honourable Court, alienate or incumber the said land and commit waste thereon.

The plaintiff therefore claims:

1. An order directing the defendant to execute such instrument as may be necessary to remove the cloud on the plaintiff's title caused by the registration of the said conveyance, and to deliver the said conveyance to the plaintiff to be cancelled.

2. An account of the rents and profits of the said parcel of land since the defendant entered into possession or occupation thereof.

3. Payment of such rents and profits and the costs of this action.

4. An injunction restraining the defendant from alienating or incumbering the same, and from committing any waste or destruction thereon.

5. Possession of the said lands.

6. All proper directions for the purposes aforesaid.

7. Such further and other relief as to this Honourable Court shall seem meet.

In the High Court of Justice.

Writ issued the _____ day of, &c.

Between—*J.K.*, *W.K.*, and *L.K.*, infants under the age of twenty-one years, by *W.K.* their next friend

and

J.J.L., *J.F.J.*, *D.S.K.*, and *J.E.K.*, his wife Defendants.

242
Claim by infant wards of Court for *habeas corpus* against persons improperly detaining them from their father.

1. The plaintiffs *J.K.*, *W.K.* and *L.K.*, reside in the City of Toronto, and are infants, under the age of twenty-one years, and sue by *W.K.* of the said City of Toronto, lumber merchant, their next friend.

2. The plaintiffs are the children of the defendants, *D.S.K.* and *J.E.K.* his wife, and are of the respective ages following, that is to say, *J.K.* of the age of eleven years, *W.K.* of the age of six years, and *L.K.* of the age of four years.

3. The plaintiffs are entitled to, or interested in, a sum of \$400 of lawful money of Canada, which has been settled upon them by their father, the defendant *D.S.K.*, and which is now in his hands, and it is necessary to the welfare of the plaintiffs that the said sum of money should be secured and applied from time to time, for the plaintiffs' benefit, under the direction of this Honourable Court (*a*).

4. The defendant *D.S.K.* the plaintiffs' father, is a Presbyterian in religion and desires the plaintiffs to be brought up and instructed as Presbyterians, but the defendant *J.E.K.*, the plaintiffs' mother, is, and always has been a Roman Catholic, in religion, and has always desired and endeavoured to instruct and bring up the plaintiffs as Roman Catholics, contrary to the wish and desire, and against the will, of the plaintiffs' father.

5. In the month of April, 19 , the defendant *J.E.K.*, in order to effect her object in bringing the plaintiffs up as Roman Catholics, applied to the defendant, *J.J.L.* who is the Roman Catholic Bishop of Toronto, and the defendant *J.F.J.* who is the Vicar-General of the Roman Catholic Church or Denomination in Toronto, to aid her in so doing, and thereupon the defendants, *L.*, *J.* and *J.E.K.*, conspired together and formed the plan of carrying the plaintiffs away from the lawful care and custody of their father, at his house in the City of Toronto, without his knowledge, and against his will, and of concealing them in some Roman Catholic establishment or house, in, or in the neighbourhood of, the City of Toronto, there to be detained and secretly instructed and educated, and brought up in the Roman Catholic religion against the will of their said father.

6. The defendants, *L.*, *J.* and *J.E.K.*, accordingly afterwards, in pursuance of the said plan and conspiracy aforesaid, in the said month of April, caused the plaintiffs to be carried away from their said father's house without his knowledge or consent and against his will, and caused them to be placed in some Roman Catholic Institution or house in, or in the neighbourhood of, Toronto, as aforesaid, and they have there ever since been and still are secretly kept and detained, and have been thence hitherto and still are being instructed and

(a) As to this clause see *Holmested & Langton Jud. Act*, s. 26 notes.

brought up in the Roman Catholic religion, by and with the consent and knowledge and by and with the aid and assistance, and at the expense of the defendants, *L., J. and J.E.K.*, and their place of concealment as aforesaid is by the same defendants kept hidden from the plaintiffs' father and the same defendants refuse to disclose the same, or to deliver the plaintiffs up to their father.

7. The defendants, *L., J. and J.E.K.*, are determined at all hazards to carry out their design hereinbefore stated of causing the plaintiffs to be instructed and brought up in the Roman Catholic religion, and intend if necessary to carry the plaintiffs out of the jurisdiction of this Honourable Court.

8. The plaintiffs' father and mother have not ceased to live and cohabit together, but the plaintiffs' mother, although frequently requested by the plaintiffs' father to disclose the place of the plaintiffs' concealment, refuses so to do.

9. The defendants *J. and L.* in like manner, have been frequently applied to by the plaintiffs' father to deliver the plaintiffs up to him or to disclose the place of their detention and concealment; but they have always refused and still refuse so to do and they will not do so unless compelled by this Honourable Court.

The plaintiffs therefore claim:

1. Proper directions to be given by this Honourable Court for the maintenance, support and education of the plaintiffs, and for that purpose that an account may be taken of the money belonging to the plaintiffs as aforesaid, and that the same may be secured and applied for the benefit of the plaintiffs from time to time as the interests of the plaintiffs may require.

2. An order or direction of this Honourable Court that the defendants *L., J. and J.E.K.* do deliver the plaintiffs up to their father to be maintained and supported by him and to be instructed and educated in the Presbyterian religion or as their said father may from time to time determine.

3. An injunction restraining the defendants *L., J. and J.E.K.* and all other persons under their orders or control, their servants and agents, from detaining or concealing the plaintiffs from their said father, and from counselling, aiding or assisting in any such detention or concealment, and from removing the plaintiffs or either of them from the jurisdiction of this

Honourable Court, and from counselling, aiding or assisting in any such removal, and from instructing or educating the plaintiffs or any or either of them in the Roman Catholic religion, without the consent of their said father, and from counselling, aiding or assisting any such instruction or education.

4. A writ or writs of *habeas corpus ad subjiciendum* to be issued under the Seal of this Honourable Court, directed to the same defendants, commanding them to produce before this Honourable Court the bodies of the plaintiffs, that they may be delivered into the lawful custody of their father.

5. For the purposes aforesaid all proper directions to be given and accounts taken.

6. Such further and other relief as to this Honourable Court may seem meet.

243

Defence of
infancy.

The defendant was at the time of the making of the alleged promise [*or contract*] in the statement of claim mentioned an infant under the age of 21 years.

SECTION XXV.—INSANITY.

244

Defence of in-
sanity.

The defendant at the time of the making of the alleged agreement [*or execution of the instruments, &c.*] in the statement of claim mentioned was of unsound mind and incapable of making [*or executing, &c.*] or understanding the same as the plaintiff at the time well knew.

245

Reply to de-
fence of insan-
ity.

The plaintiff says that if the defendant was of unsound mind as alleged in the statement of defence the plaintiff was not aware thereof at the time of the making of the said agreement and the plaintiff further says that the said agreement was made fairly and in good faith.

SECTION XXVI.—INJUNCTION.

(Formal parts: see No. 123.)

Between His Majesty's Attorney-General for the Province of Ontario, at and by the relation of *A. B.*

Plaintiff,

and

C.D., E.F., G.H.

Defendants.

246
Claim to restrain encroachment on public highway.

1. The plaintiff is His Majesty's Attorney-General for the Province of Ontario, and brings this action upon the relation of *A.B.*, of the City of Toronto, in the County of York, and Province of Ontario, grocer.

2. There is situate in the said city a certain highway or public road commonly called or known as Yonge Street, the said street is throughout its entire length sixty-six feet wide.

3. The above-named defendants *C.D.* and *E.F.* are jointly seized in fee simple in reversion of that lot of land known as (*describing it*) situate on the west side of the said Yonge Street, and abutting on the same, and the defendant *G.F.* is lessee for a term of years of the said land as tenant of the said *C.D.* and *E.F.*, and is in possession thereof as such lessee.

4. The defendants have surrounded the said lot with a board fence, and instead of conforming to the proper boundary line of the said street have enclosed within their fence a considerable portion of the soil of the said Yonge Street, and the defendant *G.H.* has been ever since the erection of such fence, and is now, in possession of the soil of the said street so enclosed as aforesaid.

5. The above-named relator *A.B.* is owner in fee of a house and grounds which abut on the said Yonge Street, and are situated on the east side thereof.

6. The board fence surrounding the said lot and enclosing a portion of the said street materially diminishes the width of the said street, and is an illegal obstruction thereof, and deprives the relator and the many persons residing on the said street, together with all the rest of His Majesty's subjects, of the free and uninterrupted use thereof, to which they are entitled.

7. The plaintiff claims:

1. An injunction restraining the defendant from permitting the said board fence to remain on the soil of the said Yonge Street, or so that the said street and the right to the use and enjoyment thereof by the public may be in any way hindered, obstructed or interfered with.

2. The costs of this action.

3. Such further or other relief as may seem meet.

247

Obstruction
of a right of
way.

See *Cannon v. Villars*, 8 Ch. D. 415, and *Original Hartlepool Collieries Co. v. Gibb*, 5 Ch. D. 713.

(Formal parts: see No. 123.)

248

Claim for in-
junction re-
straining de-
fendant from
causing or
continuing
a nuisance. (a)

1. The plaintiffs are the owners of (*describe property*).
2. The defendant is a keeper of a livery stable occupying the property adjoining and on the side of the plaintiffs' property.
3. The stables in connection with the property occupied by the defendant were built about two years ago, upon a mound of earth placed for that purpose raised to a considerable height against the wall of the plaintiffs' house, which said wall is not a party wall.
4. The said stables are built as aforesaid on a mound of earth heaped to a great height against the outer wall of the plaintiffs' house, and the wall of the said stables touches or almost touches the wall of the plaintiffs' house. The drainage and moisture from the stables, and rain, soak into the earth on which the said stables are built, and therefrom soaks into and through the wall of the plaintiffs' house, and the dampness so caused has destroyed the paper in the hall of the plaintiffs' house, and is gradually rotting away the walls adjoining the said stables.

5. Before the earth was so heaped up and the stable so built against the said wall, it was perfectly dry and sound.

6. A further annoyance to the plaintiff is caused by the constant noise arising from the stamping and kicking of the horses and the rattling of the ropes and chains against the rings, poles and mangers of the said stable, the rolling and

(a) See *Broder v. Saillard*, 2 Ch. D. 692.

cleaning of carriages, and other noises, which cause great discomfort and annoyance to the inmates of the plaintiffs' house.

7. In consequence of the discomfort and annoyance caused as aforesaid, the plaintiffs' tenant of the said house has found it impossible to occupy the same, and his wife who is in delicate health, has been compelled to leave, and he has given the plaintiffs notice of his intention to quit the said premises.

The plaintiffs claim \$ damages, and an injunction restraining the defendant from the continuing or repeating of the said several nuisances, and costs of this action.

(*Formal parts: see No. 123.*)

1. The plaintiff at the times hereafter mentioned was and still is possessed of certain pasture land, situate (*describing it*). **249**
Claim for polluting waters flowing through plaintiff's land.

2. The plaintiff then was and still is entitled to have the use of the water or a stream [*or watercourse*] which flowed through his said land, for his cattle to drink, and for other purposes (*state what*) without the same being polluted and disturbed as hereinafter mentioned.

3. The defendant at various times between (*state dates if practicable*) polluted and disturbed the water of the said stream [*or watercourse*] by throwing and causing to flow into the same noxious substances and fluids, so that the said water became foul, noxious, and unfit for the plaintiff's cattle to drink and for other purposes above mentioned.

4. By reason of the matters above complained of, cows of the plaintiff which were watered in and from the said stream [*or watercourse*] became sick and disordered, and the plaintiff was compelled to drive his said cows elsewhere to procure fresh water, and by reason of the said acts of the defendant the plaintiff has been put to serious loss and damage, and his said land has been lessened in value.

The plaintiff claims (*see form No. 248*).

(*Formal parts: see No. 123.*)

1. The plaintiff was at the times hereinafter mentioned and still is possessed of a piece of land (*describe land*) through which flows a stream [*or watercourse*]. **250**
Claim for penning back water on plaintiff's land.

2. The plaintiff then was and still is entitled to have the said stream flow by and away from the said land without obstruction or hindrance.

3. The defendant in the month of 19 , and thenceforth until (*state how long obstruction continued*) obstructed the flow of the said stream at a point below the land owned by the plaintiff and above described, by erecting a dam or wall in the bed of the said stream and thereby forced back the waters of the said stream so that it was hindered and prevented from flowing past and away from the said lands of the plaintiff as it of right ought to have done, and otherwise would have done.

4. By reason of the premises, the water of the said stream on the day of , overflowed and flooded the plaintiff's said land and remained thereon for (*state length of time*), and spoilt the crops growing thereon and the plaintiff was deprived of the use of the said land and was put to an expense of \$, in removing the waters therefrom, and the said land was and is much diminished in value.

The plaintiff claims (*see form No. 248*).

For claim for an injunction to restrain the diversion of a watercourse, see No. 372.

(*Formal parts: see No. 123.*)

251

Claim to stay
waste.

1. The plaintiff is and has been from before the acts hereinafter complained of until the present time seised in fee simple (*or, as the case may be*) under and by virtue of an indenture, &c., bearing date, &c., and made between, &c., of lot No. , &c.

2. The defendant *C.D.* is in possession of the said lot as tenant for a term of years (*or, as the case may be*) of the plaintiff under and by virtue of an indenture of demise, &c., bearing date, &c., and made between, &c.

3. The said defendant has since the day of committed waste upon the said lot by cutting down and removing from off the said lot and applying to his own use a large number of the timber and other trees standing, growing, and being thereon, and also by quarrying a large quantity of stone being on and part of the said lot, and by pulling down, &c., houses, &c.

4. The defendant continues and threatens and intends to continue to commit such waste as aforesaid, and other waste and destruction of the said lot, although frequently requested by the plaintiff to desist therefrom.

The plaintiff claims:

1. An injunction restraining the defendant from committing such waste as aforesaid, or any other waste, spoil, or destruction on the said premises.

2. An account of the waste already committed and payment of the amount thereof.

3. The costs of this action.

4. Such further or other relief as the nature of the case may require.

(Formal parts: see No. 123.)

1. The plaintiff was at the time of the acts hereinafter complained of and has been since up to the present time the owner in fee simple (*or as the case may be*) in possession of lot No., &c., under and by virtue of an indenture, &c., and made, &c.

252

Claim to stay trespass in the nature of waste.

2. The defendant *C.D.* has from the day of until the present time continually trespassed upon the said lot by cutting down and removing from off the said lot and applying to his own use divers valuable timber and other trees which were growing, standing, and being on the said lot.

3. The defendant continues and threatens and intends to continue to trespass on the said lot in like manner, although frequently requested by the plaintiff to desist therefrom.

The plaintiff claims:

1. An injunction restraining the defendant from committing the acts aforesaid, and other acts of a like nature.

2. An account for the value of the timber and other trees cut down, removed and applied by the defendant to his own use as aforesaid and payment thereof.

3. The costs of this action.

4. Such further or other relief as the nature of the case may require.

253

Claim by execution creditor to prevent waste.

(Formal parts: see No. 123.)

Between—The *C.B. of C.* Plaintiffs,
and
R.J.H., S.B.F., and M. O'R., Defendants.

1. The plaintiffs are a corporation duly incorporated under the Statutes of the Dominion of Canada.

2. *G.C.C.* was in his lifetime the owner in fee simple of a certain farm, known as the "*C. farm*," composed of (*describe the land*).

3. The said *G.C.C.* died on or about the 24th day of June, 19 , having first made his will, the same being contained in two instruments, the one dated the 19th day of July, A.D. 19 , the other dated the 9th of September, A.D. 19 , both duly executed and attested, so as to pass real estate in Ontario, and by the first mentioned of said instruments he appointed the defendant *M. O'R.* sole executor of his said will, and by the second thereof, without revoking the appointment of the said *M. O'R.* as executor, as aforesaid, he devised the said lands unto the defendants *S.B.F.* and *R.J.H.*, as joint tenants, and to the heirs and assigns of the survivor, in trust for the benefit, use and advantage of *A.H.H.*, during her natural life, but in such manner that no husband of hers shall have any control over the same, and after her death then to her children, their heirs and assigns for ever, and in the event of her death without children then living, then to the use, benefit and advantage of *J.M.* and *J.C.H.*, and upon the condition that *W.H.*, a son of the said *R.J.H.*, should not in any event take any advantage or benefit from any of the foregoing trusts.

4. The defendant *M. O'R.* has duly proved the said two instruments as the will of the said *G.C.C.* and probate thereof has been granted to him as sole executor of said will, in due form of law, by the Surrogate Court of the County of Wentworth, the proper court in that behalf.

5. The defendants *S.B.F.* and *R.J.H.* have accepted the said trusts, under the said will, and have caused the same to be registered in the proper Registry for lands in the County of Halton.

6. The said *G.C.C.* was, in his lifetime, indebted to the plaintiffs in a sum of \$42,000, as indorser of two certain bills of exchange, held by the said bank; one thereof for \$40,000 made by the firm of *H., D. & Company*, of which the defendant *R.J.H.* was a partner, and on which the defendant

S.B.F. was also an indorser; the other for \$2,000, made by the defendant *R.J.H.* On this last mentioned note, the defendant *R.J.H.* paid \$500, but failed to pay any portion of the residue of either of the said notes, and thereupon on the death of said *C.*, the plaintiffs, in due course of law, sued the defendant *M. O'R.*, as executor of the last will and testament of the said *G.C.C.*, in this Honourable Court to recover the said moneys, and thereupon the plaintiffs duly recovered judgment in the said action, on the 7th day of June, 19 , for \$42,812.92 damages, and \$28.55 costs, and issued an execution thereon in due form of law against the defendant *M. O'R.*, as such executor, as aforesaid, addressed to the Sheriff of the County of , commanding him to levy the said moneys of the goods and chattels and lands and tenements in his county of the said *G.C.C.*, in due course of law, which said writ duly indorsed, was delivered to the Sheriff of the County of , for execution, on the 9th day of June, 19 .

7. The said lands and another parcel of about 150 acres devised by the said *G.* to one *H.E.F.*, form the whole of the lands of the said late *G.C.C.*, in the County of Halton, and the whole thereof together are not worth the sum of \$15,000, and the plaintiffs have no other security for the said judgment debt except the said lands, and a parcel of about 60 acres of land in the Township of East Flamborough, in the County of Wentworth, worth not more than \$1,500, and which are levied on by a concurrent writ against lands issued upon the said judgment, and directed to and placed in the hands of the Sheriff of the County of Wentworth for execution, and the whole of the said lands in the Counties of Wentworth and Halton form an insufficient security for the payment of the said judgment debt. The said firm of *H., D. & Co.*, and said *R.J.H.* have both become insolvent; their estates are wound up, but it is as yet impossible to tell accurately the amount of the dividend, but the same will be exceedingly small, certainly under 25 cents on the dollar: the plaintiffs recovered from the defendant *S.B.F.*, who was an indorser on the said note of \$40,000, the sum of \$10,000, and save as aforesaid, the plaintiffs have not received, nor do they hold any security or satisfaction whatever for the said judgment debt, interest and costs, and the whole of said real properties of said *C.*, in the Counties of Wentworth and Halton, form a security insufficient by at least \$20,000 for the payment of the plaintiffs' said judgment debt.

8. The lands mentioned in the first paragraph of this statement of claim have always been used together as one property, and known as the "C. farm," of which about 180

acres are cleared, and when the said writ against lands was placed in the hands of the Sheriff of the County of Halton, as stated in the 6th paragraph hereof, there was a large quantity of timber, trees, wood and underwood, and valuable fallen timber, growing, being and lying on the said lands, of the value of at least \$2,000. And the said premises would, if stripped of said timber, be much less valuable as a farm, and less saleable, the said timber being required for the purposes of fencing, fuel, and building on the said farm.

9. The defendant *R.J.H.* has always acted, now acts, and is acting on behalf of himself and the defendant *S.B.F.*, as managing trustees under the said trusts contained in the said *C.*'s will, and the said defendants, *R.J.H.* and *S.B.F.*, threaten and intend to commit waste on the said premises, by cutting down, removing, selling, and disposing of the whole of the timber, trees, wood, underwood and fallen timber on the last mentioned lands, and applying the proceeds thereof for the purposes of the said trusts, and the defendant *H.*, so acting as aforesaid, on behalf of himself and the said *S.B.F.*, has offered, and now is offering the same for sale, and has employed one *W.C.* to cut and remove the said fallen timber, a great deal of which is valuable for saw logs and fencing purposes, and has thrown down fences on the said lands to enable the said *C.* and others the more easily to remove timber or wood fallen thereon, and the said *C.* has removed a large quantity of such fallen timber: and unless restrained by the order and injunction of this Honourable Court, the said defendants *H.* and *F.* will cause the said lands to be wholly stripped of the said timber, trees, wood, underwood and fallen timber.

10. The defendant *M. O'R.* objects to the said proceedings of the defendants *R.J.H.* and *S.B.F.*, and to any waste whatever being committed on the said farm. The said *S.B.F.* in answer to inquiries in that behalf made by the plaintiffs denies all knowledge of the said acts of the defendant *R.J.H.*, but has in no way interfered to prevent the same or expressed his dissent or disapproval thereof, and the said *R.J.H.* has avoided the agent of the plaintiffs sent to notify him to desist from the waste aforesaid.

11. The defendants *S.B.F.* and *R.J.H.* have both actual notice and knowledge of the fact of the recovery of the said judgment by the plaintiffs; the placing of the said writs of execution in the hands of the Sheriff of the County of Halton, and of every other fact and circumstance hereinbefore set forth.

The plaintiffs claim:

1. An injunction restraining the defendants *S.B.F.* and *R.J.H.* from committing such waste as aforesaid, and from selling, or attempting to sell the said timber, and other trees standing, growing and being thereon, and from removing the said fallen timber, and from committing any other waste, spoil or destruction on the said premises.

2. An account of the waste already committed.

3. The costs of this action.

4. For the purposes aforesaid all such accounts to be taken, inquiries made, and directions given, as the nature of the case may require.

5. Such further and other relief as the nature of the case shall require and shall seem just.

(Proceed as in No. 292 to end of paragraph 5.)

6. There are divers valuable oak, pine, elm and other timber trees growing and standing upon the lands comprised in the plaintiff's mortgage, which trees and timber are a material part of the plaintiff's said security, and, if the same, or any of them, were felled and taken away, the said mortgaged premises would be an insufficient security to the plaintiff for the money due thereon.

254

Claim to fore-
close and to
restrain waste
by mortgagor.

7. The defendant who is in possession of the said mortgaged premises has lately cut down some of the said oak trees lately growing upon the said lands, and has marked for felling a large quantity of the said oak, pine and elm trees and other timber, and he has engaged a large number of workmen to cut and remove, and he threatens and intends forthwith to cut down and remove a large quantity of the said trees and timber from off the said mortgaged premises.

(Add to the prayer after clause 1 in Form 292.)

2. An injunction restraining the defendant, his servants, workmen, and agents, from felling, cutting, removing or disposing of any of the timber or timber-like trees now standing or growing or being in or upon the said mortgaged premises.

(Proceed as in Form 292.)

SECTION XXVII.—INSURANCE.

(Formal parts: see No. 123.)

255

Claim on a life policy.

1. The plaintiff is .
2. The defendants are a Life Insurance Co., carrying on business in Ontario.

3. By a policy of insurance issued by the defendants, numbered and dated the day of 19 , after reciting that *A.B.* of [*or, in the case of the insurance of the life of a third person the plaintiff*] had applied to the said defendants for insurance on the life of himself [*or of A.B. of*] and had agreed to pay the sum of \$ as the annual premium therefor on the day of , in every year thereafter, during the life of the said *A.B.*, and that the first of such payments had been made to the said defendants, and in consideration thereof and of the said agreements for future payments and of the representations made to the said defendants in the said application for the said policy, the defendants thereby insured the life of the said *A.B.* in the sum of \$ [*add where a beneficiary is named in the policy for the sole and separate use and benefit of the plaintiff*] and promised and agreed with the said *A.B.* [*or the plaintiff*] his executors, administrators and assigns, well and truly to pay to the said *A.B.* [*or the plaintiff*] his creditors, administrators or assigns, 3 months after due notice and satisfactory proof of the death of the said *A.B.*, should have been made to the defendants the said sum of \$ together with such further sums as might under the regulations of the defendants have been from time to time appropriated as a bonus addition to the said policy.

4. The said *A.B.* [*or the plaintiff as the case may be*] duly paid the said sum of \$ as such annual premium on or before the day of in every year after the date of the said policy until the year 19 , on the day of , in which year the said *A.B.* died while the said policy remained in full force.

4a. (*In the case of insurance of the life of a third person.*)
On the date of the said policy the plaintiff had an insurable interest in the life of the said *A.B.*, by reason of [*the said A.B. being at that time indebted to the plaintiff in the sum of \$ or as the case may be.*]

4b. (*Where the plaintiff is an assignee of the policy.*)
On the day of 19 , the said (*the payee in the*

policy) duly assigned the said policy to the plaintiff by writing under his hand indorsed thereon (*or as the case may be*) and on the day of 19 , a written notice of such assignment was given to the defendants at their principal place of business in .

4c. The plaintiff was at the time of bringing this action and still is the absolute owner of the said policy (*or otherwise shew that the plaintiff has the right to receive and give the company an effectual discharge for the moneys payable under the policy.*)

5. The plaintiff more than 3 months before the commencement of this action, viz., on the day of 19 , duly notified to the defendants the death of the said A.B. [*where so and, on the day of , 19 , furnished the defendants with a certificate of the death of the said A.B. which was accepted by them as satisfactory proof of his death.*]

6. (*State any other conditions which are expressed by the policy to be conditions precedent to the right of action and allege performance or waiver thereof.*)

7. The defendants have not paid the said sum of and bonus additions if any or any part thereof.

The plaintiff claims \$ and costs.

(*Formal parts: see No. 123.*)

256

1. The plaintiff is a widow, and the plaintiffs, ^{Another form of claim.} and , are the only children and co-heirs at law of the late deceased. And the plaintiffs are the executors and sole legal personal representatives of the said .

2. The said died on or about the day of , 19 , having first duly made and published his last will and testament, in writing duly executed in manner required by law in this Province, bearing date on or about the day of 19 , and whereby he appointed the plaintiffs executors thereof.

3. The said died without having altered or revoked his said will, and the said duly proved the same and obtained probate thereof from the proper Court in that behalf.

4. The defendants are a corporation carrying on the business of Life Assurance in the Province of Ontario, and whose head office is in the City of Toronto.

5. By a contract or policy of assurance in writing, made and issued under the corporate seal of the said defendants and duly signed and counter-signed by the proper officers thereof, and bearing date on or about the day of , 19 , the said defendants did in consideration of the payment of the sum of and of the annual payment of a like sum to be made on or before the day of in each and every year promise, after due notice and proof of the death of the said , to pay to the wife and children of the said living at the time of his death, the sum of .

6. The said duly paid the said sum of to the said defendants, and the said defendants delivered to the said the said policy of assurance.

7. The said policy of assurance was in full force and effect at the time of the death of the said .

8. On or about the day of 19 , the plaintiffs furnished the defendants with due and sufficient notice and proof of the death of the said , and the defendants have never objected to such proof, and all things have happened, and all times elapsed to entitle the said plaintiffs to the fulfilment of the said contract, and payment of said sum of yet the defendants have not carried out the said contract, or paid the said sum of or any part thereof, and the said defendants are indebted to the plaintiffs in the said sum of with interest thereon.

9. By the said will, the said directed the said to collect the amount of the said policy, and from and out of the same and other moneys, to be by them collected, to pay (*state shortly the application of the money*).

10. The defendants have neglected and refused and still neglect and refuse to pay the said sum of or any part thereof.

The plaintiffs claim :

1. Payment of the said sum of and interest thereon since the day of 19 , and the costs of this action.

2. Such further and other relief as the nature of the case may require.

(*Formal parts: see No. 125.*)

1. The defendants admit the paragraphs of the Defence to the statement of claim, and the defendants also admit that the foregoing plaintiffs furnished them with due and sufficient notice and claim. proof of the said death of the said .

2. The defendants say that the contract or policy of assurance mentioned in the paragraph of the statement of claim, was made under the following circumstances, viz., the said , by application in writing, dated the day of 19 , and signed by himself, proposed to the defendants, at their place of business, in the of to effect the said insurance on his life.

3. The said application and proposal for insurance, contained the following questions and answers: Question—Has any application ever been made to any company or society for assurance on your life, on which a policy or certificate was not issued, if so, give name, when, and if possible, why? To which the said , answered “No.”

Question—Has any physician given an unfavourable opinion of your life? To which the said answered “No.”
(*Here state in what respect the answers were untrue.*)

4. The misstatements and suppression of facts as aforesaid, and the irregular habits, and the impaired state of health of the said were material to the risks undertaken by the defendants, and were material to be known to the defendants, upon the negotiation for the said policy, and by reason of such misstatements and suppression of facts, the said policy was, and is, and should be declared null and void.

5. By way of counterclaim, the defendants repeat the foregoing allegations and claim that the said policy may be declared to be void, and may be delivered up to be cancelled.

(*Formal parts: see No. 125.*)

Previously to the issue of the said policy of insurance the said A.B. [*or the plaintiff*] delivered to the defendants a declaration which it was agreed should be the basis of the insurance effected by the said policy, in which declaration the said A.B. [*or the plaintiff*] stated that [he was then in a good state of health and was not afflicted with any disease or disorder *as the case may be*] but the said A.B. [*or the plaintiff*] was, at the time of the making of such declaration, not in

Other defences.

258
Basis of insurance untrue.

a good state of health and was then afflicted with a disease or disorder tending to shorten life, namely (*stating the nature of the disease or disorder.*)

259

Fraudulent concealment of a material fact.

Or, The defendants were induced to issue the said policy by the said *A.B.* [*or the plaintiff*] fraudulently concealing from the defendants a fact then material to be known by them and of which they were ignorant, namely, that [*the said A.B.* had suffered from and was then subject to a disease called *as the case may be*].

260

Suicide.

Or, The said policy was subject to a condition that it should be void if the said *A.B.* should die by his own hand and the said *A.B.* did die by his own hand, namely, by (*as the case may be*).

261

Claim on a fire policy.

(*Formal parts: see No. 123.*)

1 and 2. (*See Form No. 255.*)

3. By a policy of insurance issued by the defendants, numbered , and dated the day of , 19 , in consideration of the agreements and conditions contained in the said policy, and of the sum of \$ paid to the defendants by the plaintiff, the defendants agreed to insure and did insure the plaintiff for the term of from the day of , 19 , at noon, to the day of 19 , at noon, against loss or damage by fire to the amount of \$ on the following property (*as in the policy*).

4. The plaintiff until the happening of the damage and loss hereinafter mentioned was interested in the said property [*or goods and things*] so insured to the amount for which they were respectively insured.

5. On the day of , 19 , while the said policy was in full force and effect the said premises so insured were burnt down and destroyed [*or were burnt, and damaged*] by fire [*or in the case of goods the premises in which the property so insured was were burned (down) by fire*], and such fire injured or destroyed a large portion of the said household goods (*or as may be the case*) so insured.

6. By reason of the said fire the plaintiff suffered loss and damage on the said [dwelling house or as may be the case], to the extent of \$ [or, on the said household goods or property (as may be the case,) to the extent of \$].

7. One of the conditions indorsed on the said policy provided (set out or recite any conditions precedent to the right of action, and shew performance or waiver of them) (a).

8. Proofs of such loss and damage were duly furnished to the defendants pursuant to the provisions contained in the said policy.

9. By a condition indorsed upon the said policy it was provided that the loss should not be payable until [60 days] after the completion of the proofs of loss, which said proofs of loss were completed more than [60 days] before the commencement of this action, but the defendants have not paid the amount of such loss and damage or any part thereof.

The plaintiff claims \$ and costs.

(Formal parts: see No. 125.)

The said policy was subject to the condition that if the plaintiff misrep-
 sented or omitted to communicate any cir-
 cumstance which was material to be made known to the de-
 fendants in order to enable them to judge of the risk they were
 undertaking, the insurance should be of no force in respect to
 the property in regard to which the misrepresentation or
 omission was made, and the plaintiff omitted to communicate
 to the defendants a fact material to be made known to them,
 viz., (state the omitted material fact), which fact was then
 known to the plaintiff and was unknown to the defendants,
 whereby the said insurance was and is of no force [or was
 and is of no force in regard to (the property in regard to which
 the omission was made.)]

262
 Defence.
 Arson.

The said policy was subject to the condition that if the plaintiff misrepresented or omitted to communicate any cir-
 cumstance which was material to be made known to the de-
 fendants in order to enable them to judge of the risk they were
 undertaking, the insurance should be of no force in respect to
 the property in regard to which the misrepresentation or
 omission was made, and the plaintiff omitted to communicate
 to the defendants a fact material to be made known to them,
 viz., (state the omitted material fact), which fact was then
 known to the plaintiff and was unknown to the defendants,
 whereby the said insurance was and is of no force [or was
 and is of no force in regard to (the property in regard to which
 the omission was made.)]

263
 Defence.
 Misrepresen-
 tation or con-
 cealment of
 material facts.

(a) See *Home Life Assurance Co. v. Randall*, 30 S. C. R. 97.

264

Defence.

Non-performance
of conditions.

The said policy was subject to a condition that (*state the condition which has not been complied with as in the policy*), and the defendants say that the said condition has not been complied with.

265

Defence.

No proof of
loss.

The said policy was subject to a condition precedent that [*state terms of condition respecting proofs of loss not complied with, e.g., the plaintiff upon the happening of any loss or damage by fire to the property insured was in support of his claim if required, and if practicable, to produce books of account, warehouse receipts and stock list, and furnish invoices and other vouchers*], and although the plaintiff after the happening of the alleged loss and damage was required by the defendants to produce his books of account, stock list, invoices and other vouchers in support of his claim, the plaintiff did not do so although he might easily have done so.

SECTION XXVIII.—LAND, RECOVERY OF.

266Claim for re-
covery of land

(*Formal parts: see No. 123.*)

1. *K.L.*, late of Barrie in the County of Simcoe, duly executed his last will, dated the 4th day of April, 19 , and thereby devised his lands in the County of Simcoe unto and to the use of the plaintiffs and their heirs, upon the trusts therein mentioned for the benefit of his daughters Margaret and Martha, and appointed the plaintiffs executors thereof.

2. *K.L.* died on the 3rd day of January, 19 , and his said will was proved by the plaintiffs in the proper Surrogate Court on or about the 4th day of February, 19 .

3. *K.L.* was at the time of his death seised in fee of lot No. 1, in the 3rd concession of the Township of , and lot No. 5 in the 4th concession of the Township of , both in the County of Simcoe.

4. The defendant, soon after the death of *K.L.*, entered into possession of the said lots, and has refused to give them up to the plaintiffs.

The plaintiffs claim:

1. Possession of the said two lots.
2. \$ for mesne profits of the premises from the death of *K.L.* till such possession shall be given.
3. Costs of this action.

(*Formal parts: see No. 123.*)

267

1. The defendant has by the permission of the plaintiff used and occupied a house and land of the plaintiff known and described as No. on Street in the City of , from the day of , 19 , to the day of , 19 .

Claim for use and occupation of land.

2. No express agreement was made between the plaintiff and the defendant as to the amount to be paid by the defendant for the use and occupation of the said house and land, but the fair and reasonable value of the use and occupation by the defendant of the said house and land is the sum of \$.

[*Or, where an agreement has been made.* It was on the day of , 19 , (if so, by agreement in writing), agreed between the plaintiff and the defendant that the defendant should pay to the plaintiff the sum of \$ per month (*or as the case may be*) for the use and occupation of said house and land.]

3. The defendant has not paid the plaintiff anything for such use and occupation.

The plaintiff claims \$ and his costs.

SECTION XXIX.—LANDLORD AND TENANT.

(*Formal parts: see No. 123.*)

268

1. On the day of the plaintiff let to the defendant a house, No. 62 Street, in the City of Ottawa, as tenant from year to year, at the yearly rent of \$420, payable quarterly, the tenancy to commence on the day of [or for years from the day of , 19 , under a lease by deed dated].

Claim by landlord to recover possession—Tenancy determined.

2. The defendant took possession of the said house and continued tenant thereof until the day of last [when the tenancy determined by a notice duly given, or when the said term expired by effluxion of time].

3. (*Where tenancy determined by notice*). The defendant has disregarded the said notice and still retains possession of house.

4. [*Amendment to meet the counterclaim infra.*] (The defendant, C.D., sets up in his defence that the plaintiff

agreed to give to the defendant a new lease, and the plaintiff, *A.B.*, admits the agreement alleged in the statement of defence, but he refuses to grant to the defendant a lease, inasmuch as such agreement provided that the lease should contain a covenant by the defendant to keep the house in good repair and a power of re-entry by the plaintiff upon breach of such covenant and the plaintiff says that the defendant, since the agreement was made, has not kept the house in good repair, and the same is now in a dilapidated condition.)

The plaintiff claims:

1. Possession of the house.
2. \$ for mesne profits from the day of .
3. His costs of this action.

(*Formal parts: see No. 125.*)

The defence and counterclaim of the above-named *C.D.*

1. Before the determination of the tenancy mentioned in the statement of claim, the plaintiff, *A.B.*, by writing dated the day of and signed by him, agreed to grant to the defendant *C.D.*, a lease of the house mentioned in the statement of claim, at the yearly rent of \$450, for the term of 21 years, commencing from the day of when the defendant, *C.D.*'s, tenancy from year to year determined, and the defendant has since that date been and still is in possession of the house under the said agreement.

2. By way of counterclaim the defendant claims to have the agreement specifically performed, and to have a lease granted to him accordingly.

(*Formal parts: see No. 126.*)

270

Reply.

The plaintiff, *A.B.*, admits the agreement stated in the defendant, *C.D.*'s, statement of defence, but he refuses to grant to the defendant a lease, because such agreement provided that the lease should contain a covenant by the defendant, to keep the house in good repair, and a power of re-entry by the plaintiff upon breach of such covenant, and the plaintiff says that the defendant, since the making of the said agreement, has not kept the house in good repair, and the same is now in a dilapidated condition.

(*Formal parts: see No. 123.*)

271

1. On the day of the plaintiff, by deed, let to the defendant a house and premises, No. 52 Street, in the City of Belleville, for a term of 21 years from the day of , at the yearly rent of \$400 payable quarterly.

Claim for possession—
Breach of covenant—
Damages for breach of covenant—
Arrears of rent.

2. By the said deed, the defendant covenanted to keep the said house and premises in good and tenantable repair.

3. The said deed also contained a clause of re-entry, entitling the plaintiff to re-enter upon the said house and premises, in case the rent thereby reserved, whether demanded or not, should be in arrear for twenty-one days, or in case the defendant should make default in the performance of any covenant upon his part to be performed.

4. On the , a quarter's rent became due; and on the , another quarter's rent became due. On the , both had been in arrear for twenty-one days, and both are still due.

5. On the same , the houses and premises were not, and are not now, in good or tenantable repair, and it would require the expenditure of a large sum of money to reinstate the same in good and tenantable repair, and the plaintiff's reversion is much depreciated in value.

The plaintiff claims:

1. Possession of the said house and premises.
2. \$ for arrears of rent.
3. \$ damages for the defendant's breach of his covenant to repair.
4. \$ per month for occupation of the house and premises from the , to the day of recovering possession.
5. His costs of action.

(*Formal parts: see No. 123.*)

272

1. By lease by deed [*or agreement in writing or as the case may be*] the plaintiff let [*or it was agreed between the plaintiff and the defendant that the plaintiff should let*] to the defendant the house and land known and described as No. on Street in the of , with the furniture and effects which then were in the said house [*or as set forth*]

Claim for rent of furnished house.

in a schedule annexed to said lease *or agreement or as the case may be*], for the period of months at the rent of \$ per month, payable monthly (*as the case may be*).

2. The defendant pursuant to said lease [*or agreement*] entered into possession of the said house and land with the said furniture and effects, and paid the plaintiff the sum of \$, for the rent for the first month, but has not paid the rent due for the months of (*as the case may be*).

The plaintiff claims \$ and costs.

(*Formal parts: see No. 123.*)

273

Claim for
breach of
covenant.

1. By an indenture of lease under seal dated the day of 19 , [made pursuant to the Act respecting Short Forms of Leases] the defendant demised to the plaintiff a certain dwelling house, messuage or tenement known as (*according to the fact*) for the term of years, subject to the covenants and stipulations therein contained.

[*Or, On the day of 19 , the plaintiff became tenant from year to year to the defendant of a certain dwelling house, messuage or tenement known as (*describing it*) upon the terms amongst others that the defendant would allow the plaintiff to have quiet enjoyment of the said premises during the said tenancy.*]

2. (*In the case of a covenant for title*). The defendant thereby covenanted with the plaintiff that he had at the said date full power to demise the said dwelling house, messuage or tenement.

[*Or, In the case of a covenant for quiet enjoyment, The defendant thereby covenanted with the plaintiff that the plaintiff paying the rent thereby reserved and performing the covenants in said lease, on his part contained should peaceably possess and enjoy the said demised premises for the said term without any interruption or disturbance from the lessor his heirs, executors, administrators and assigns or any other person or persons lawfully claiming by, from, or under him, them, or any of them.*]

3. The defendant at the time of the making of the said lease had not full power to demise the said demised premises to the plaintiff and by reason thereof on the day of 19 , one A.B., lawfully claiming the said demised premises (*state the ground of the claim of A.B.*) entered thereon and evicted the plaintiff.

[Or, The plaintiff paid the said rent and performed and observed the covenants on his part, in said lease contained, until the day of 19 , and on the said day of 19 , during the said term one *A.B.* lawfully claiming the said demised premises by virtue of (*stating the ground of A.B.'s claim*), and having a good title to the same and to the possession thereof through and under the defendant, entered thereon and evicted the plaintiff.]

4. By reason of such eviction the plaintiff lost the use and occupation of the said demised premises and the profits of the business which he then was carrying on upon the said premises, and was put to great expense in providing himself with other premises and in removing his goods thereto.

(*Formal parts: see No. 123.*)

1. (*State tenancy and its termination as in previous forms.*)

274

Claim against
overholding
tenant for
double value.
(a)

2. After the day of 19 , (*date when the tenancy terminated*) namely, on the day of 19 , the plaintiff as and being the defendant's landlord as aforesaid and the person to whom the reversion of the said messuage and land then belonged [by his agent thereunto lawfully authorized] made a demand upon and gave notice in writing to the defendant for delivery to the plaintiff of the possession of the said messuage and land.

3. The defendant did not in accordance with such demand and notice deliver possession of the said messuage and land to the plaintiff, but wilfully held over the same and kept the plaintiff then being entitled to the possession of the land out of the possession thereof [until the day of 19 .]

4. Double the yearly value of such messuage and land for the period from the (*date of termination of tenancy*) until the said (*date of delivery*), amounts to the sum of \$, which said sum is still wholly due to the plaintiff and unpaid.

The plaintiff claims \$ and costs.

[Or where possession has not been delivered up before action.

4. Double the yearly value of such messuage and land amounts to the sum of \$, and the defendant has not paid such double value nor any part thereof for the time he

(a) Under R. S. O. 1897 c. 342, s. 20.

has retained possession of the said premises since the termination of the said tenancy.

The plaintiff claims:

1. The double value of the said premises from the termination of the said tenancy until the plaintiff shall recover possession of the premises.
2. Delivery of possession.
3. His costs of this action.]

(Formal parts: see No. 123.)

275

Claim against
overholding
tenant for
double rent.(a)

1. The defendant until the day of , 19 , was tenant to the plaintiff of a messuage and land as tenant from year to year at a yearly rent of \$ payable monthly.

2. The defendant on the day of 19 , duly gave to the plaintiff notice of his intention to quit the said premises at a time mentioned in such notice, namely, on the day of 19 .

3. The defendant did not at the said time mentioned in such notice deliver up possession of the said messuage and land to the plaintiff, but continued in possession thereof until the day of , 19 .

4. Double rent of the said messuage and land during the said period between the day of , 19 , (*time named in notice*) and the day of , 19 , (*time of delivery of possession*) amounts to the sum of \$, which said sum is still wholly due to the plaintiff and unpaid.

The plaintiff claims \$ and costs.

(If the defendant is still in possession when the action is brought, par. 3 would need modification, and a claim for delivery of possession should be added, and a claim for relief may be framed similar to that in the preceding Form.)

(a) Under R. S. O. 1897 c. 342, s. 21.

SECTION XXX.—LIMITATIONS, STATUTES OF.

The defendant says that the plaintiff's claim is barred by The Revised Statutes of Ontario, chapter 324, section 38.

276

Defence of the Statute of Limitations (21 James I. c. 16.) R.S.O. c. 324, s. 38.

277

Another form.

The defendant claims the benefit of the provisions of The Revised Statutes of Ontario, chapter , and of all other statutes of limitation, in bar to the relief sought by the plaintiff in this action.

SECTION XXXI.—MALICIOUS PROSECUTION.

(Formal parts: see No. 123.)

278

1. The plaintiff at the time hereinafter mentioned was a book-keeper in the employment of the defendant.

Claim for malicious prosecution on a charge of embezzlement and for false imprisonment.

2. The defendant is a merchant carrying on business in .

3. On or about the day of , 19 , the defendant gave the plaintiff into custody of a constable falsely charging that the plaintiff had committed the crime of having embezzled money of the defendant to the amount of \$500, and caused him to be taken by the said constable to the Police Station, and there to be imprisoned and kept in durance until the following day, when he was brought before the Police Magistrate at the said . On the said last mentioned day, the defendant falsely and maliciously and without reasonable or probable cause appeared before the said Police Magistrate as informant and charged the plaintiff with having embezzled the said money.

4. On the said last mentioned day, the defendant procured the said Police Magistrate to remand the plaintiff to prison and caused the plaintiff to be imprisoned until the day of , 19 , and then again to be brought into custody before the said Police Magistrate.

Prosecution before a Police Magistrate.

5. The said Police Magistrate having on the said day of , 19 , heard the said charge, dismissed the same and discharged the plaintiff out of custody, whereby the said prosecution was determined.

6. By reason of the premises the plaintiff has been injured in his reputation and has lost his employment, and has incurred expense in defending himself from the said charge and obtaining his release from the said imprisonment.

The plaintiff claims \$ damages and his costs of this action.

Prosecution
by an indict-
ment.

[Or 3. The defendant falsely and maliciously and without reasonable or probable cause presented to the Grand Jury at the Assizes holden in and for the County of , on the day of , 19 , an indictment against the plaintiff.

4. The said indictment charged the plaintiff with having
(as the case may be).

5. The defendant further falsely and maliciously and without probable cause prosecuted and caused the plaintiff to be tried upon the said false charge at the said Assizes.

6. Upon such trial the plaintiff was acquitted of the said charge whereby the said prosecution was determined.

7. See No. 6 in preceding form.

The plaintiff claims \$ damages and his costs of action.]

(Formal parts: see No. 123.)

279

Another form.

1. The plaintiff was in the service of the defendant as his cook [and had been in his service in that capacity for years] at the time of the grievances hereinafter mentioned.

2. On the day of , 19 , the defendant, missing a twenty dollar note which belonged to him, charged the plaintiff with having stolen it. The plaintiff at once denied the said charge.

3. Thereupon the defendant falsely and maliciously and without any reasonable or probable cause, appeared before a Justice of the Peace and charged the plaintiff with having feloniously stolen the said note, and upon such charge procured the said Justice to grant his warrant for apprehending the plaintiff and bringing her before the said Justice to be dealt with according to law, and in and by virtue of the said warrant caused the plaintiff to be arrested and to be imprison-

ed [for days] and then brought in custody before the said Justice on the day of , 19 .

4. On the said day of 19 , the defendant procured the said Justice to remand the plaintiff to prison, and caused the plaintiff to be imprisoned until the of , 19 , and then again brought in custody before the said Justice.

5. Upon the said of , 19 , the said Justice having heard the said charge dismissed the same, and discharged the plaintiff out of custody, whereby the said prosecution was determined.

6. The plaintiff has, by reason of the above conduct of the defendant, been injured in her character, and put to an expense of \$ in obtaining her release from the said imprisonment.

The plaintiff claims \$ damages and costs.

SECTION XXXII.—MALICIOUS ARREST.

(*Formal parts: see No. 123.*)

1. On or about the day of , 19 , the defendant maliciously and without reasonable or probable cause, procured an order for arrest to issue out of the High Court of Justice in a certain action in which the defendant was plaintiff and the plaintiff defendant, directing the Sheriff of to arrest the plaintiff, and him safely keep until the plaintiff should have given security in the said action for the sum of \$, by falsely and maliciously representing on affidavit in the said action that the plaintiff was then about to quit Ontario with intent to defraud his creditors generally or the defendant in particular.

280
Claim for
malicious
arrest

2. The defendant further caused the said order to be delivered to the said Sheriff to be executed and caused the plaintiff to be arrested by the said Sheriff thereunder and to be detained and imprisoned thereunder for a long time, namely until about the day of , 19 .

3. On the said last mentioned day, the plaintiff applied to a Judge of the High Court of Justice for his release and obtained an order for his discharge out of custody on the ground that the plaintiff was not about to quit Ontario as aforesaid, [or and the said order of arrest was upon the said application set aside].

4. By reason of the premises the plaintiff suffered injury in body and mind and was prevented from transacting his business and was injured in his credit and incurred expense in obtaining his release from the said imprisonment.

The plaintiff claims \$ damages and his costs of action.

SECTION XXXIII.—FALSE IMPRISONMENT.

281

Claim for
false im-
prisonment.(a)

(*Formal parts: see No. 123.*)

1. The plaintiff is a journeyman painter. The defendant is a builder having his building yard, and carrying on business at Ottawa, and for six months before and up to the 22nd August, 19 , the plaintiff was in the defendant's employment as a journeyman painter.

2. On the said 22nd August, 19 , the plaintiff being at work in the defendant's yard, at about ten o'clock in the morning, the defendant's foreman, X. Y., called the plaintiff to him, and accused the plaintiff of having on the previous day stolen a quantity of paint, the property of the defendant, from the yard. The plaintiff denied the charge, but X.Y. gave the plaintiff into the custody of a constable, whom he had previously sent for, upon a charge of stealing paint.

3. The defendant was present at the time when the plaintiff was given into custody, and authorized and assented to his being given into custody; and in any case X.Y., in giving him into custody, was acting within the scope and in the course of his employment as the defendant's foreman, and for the purposes of the defendant's business.

4. The plaintiff upon being so given into custody, was taken by the said constable to the police station, and he was there detained in a cell till late in the same afternoon, when he was taken to the police court, and the charge against him was heard before the magistrate then sitting there, and was dismissed.

5. In consequence of being so given into custody, the plaintiff suffered annoyance and disgrace, and loss of time and wages, and loss of credit and reputation, and was thereby unable to obtain any employment or earn any wages for three months.

The plaintiff claims \$ damages and his costs of action.

(a) See Con. Rules, 1888, Form 69.

(Formal parts: see No. 125.)

282

Defence to
foregoing
claim. (b)

1. The defendant denies that he was present at the time when the plaintiff was given into custody, or that he in any way authorized or assented to his being given into custody. And the said X.Y., in giving the plaintiff into custody, did not act within the scope or in the course of his employment as the defendant's foreman, or for the purposes of the defendant's business.

2. At some time about five or six o'clock on the , being the evening before the plaintiff was given into custody, a large quantity of paint had been feloniously stolen by some person or persons from a shed upon the defendant's yard and premises.

3. At about 5.30 o'clock on the evening of the the plaintiff, who had left off work about half an hour previously, was seen coming out of the shed when no one else was in it, although his work lay in a distant part of the yard from, and he had no business in or near the shed. He was then seen to go to the back of a stack of timber in another part of the yard. Shortly afterwards the paint was found to have been stolen, and it was found concealed at the back of the stack of timber behind which the plaintiff had been seen to go.

4. On the following morning, before the plaintiff was given into custody, he was asked by X.Y. what he had been in the shed and behind the stack of timber for, and he denied having been in either place. X.Y. had reasonable and probable cause for suspecting, and did suspect that the plaintiff was the person who had stolen the paint, and thereupon gave him into custody.

(Formal parts: see No. 125.)

283

Defence in an
action against
a magistrate
for false im-
prisonment,
"Not guilty
by statute."

1. The defendant is one of Her Majesty's Justices of the Peace for the County of Norfolk and for the Town of Simcoe, being Police Magistrate for the said County and Town of Simcoe and acted solely as such in relation to the matters complained of in the Statement of Claim.

2. The defendant says that he is not guilty.

Marginal note
to such plea.
(a)

In the margin of the paragraph containing such a plea must be inserted the words "By statute," together with a reference to the particular statutes relied on; as thus:—

By statute: 1 Jac. i., c. 5; 21 Jac. i., c. 12; R. S. O. 1897 c. 88, ss. 1, 4, 7, 8, 9, 10, 13, 14, 15, 19 and 20; Crim. Code 1892, ss. 886, 889, 890 and 982; R. S. C. c. 106, ss. 116 and 117, Public Acts (a).

SECTION XXXIV.—MARRIAGE.

(Formal parts: see No. 123.)

284

Claim for
breach of
promise to
marry.

1. The plaintiff is the daughter of a farmer living, &c.
 2. The defendant is, &c.
 3. The plaintiff and the defendant in the month of _____, agreed to marry one another on the _____ day of _____, 19 ____.
- [Or by letter (or letters) bearing date the _____ day of _____, 19 ____, the plaintiff and the defendant agreed to marry one another, or the defendant agreed to marry the plaintiff (as may be the case), add where so, and that such marriage should take place on the _____ day of _____, 19 ____.]
- [4. (When no day fixed) A reasonable time for the taking place of such marriage has elapsed.]
5. The plaintiff has always been ready and willing to marry the defendant, but the defendant has neglected and refused to marry the plaintiff.

[Or, where the defendant has married another person.

4. On the _____ day of _____, 19 ____, the defendant married another woman.

5. Until the defendant so married another woman the plaintiff was always ready and willing to marry the defendant.]

285

Claim for
special dam-
age conse-
quent thereon.

6. The plaintiff in view of the then intended marriage between herself and the defendant and at the defendant's request, gave up a situation which she then had as (according to the facts) and incurred expenses to about \$ _____ in preparing clothing and other matters for the said intended marriage.

7. In consequence of the conduct aforesaid of the defendant the plaintiff lost the said marriage, and her said situation as _____, and the benefit of the expense incurred as aforesaid, and was injured in her health and feelings.

The plaintiff claims \$ _____ damages and costs.

SECTION XXXV.—MASTER AND SERVANT.

*(Formal parts: see No. 123.)***286**

1. The plaintiff was employed by the defendant as (*employment*) between the day of , 19 , and the day of , 19 , at (*state wages*), payable [*weekly or as may be the case*].

Claim for wages.

2. For work and services done and rendered by the plaintiff to the defendant in the said employment the sum of \$ for wages at the rate aforesaid from the day of , 19 , to the day of , 19 , became due and payable to the plaintiff, but the defendant has not paid the same.

The plaintiff claims \$ and costs.

*(Formal parts: see No. 123.)***287**

1. On the day of 19 , [the plaintiff and defendant entered into an agreement in writing [*or by letters*] by which it was agreed (*showing employment, its nature, duration and terms, according to the agreement*).

Claim for wrongful dismissal.

[*Or the plaintiff entered into the employment of the defendant as a (state the capacity), at a salary of \$ per annum—or as the case may be*].

2. The plaintiff continued in such employment in the capacity and on the terms aforesaid until the day of , 19 , when the defendant [*before the expiration of the said [year, or other period agreed for the employment] [or where notice is alleged as necessary to terminate the employment without any such notice having been given by either the plaintiff or the defendant to the other of them to determine the said employment] wrongfully and without any just or sufficient cause dismissed the plaintiff from his said service and refused to retain him therein for the remainder of the said (period) [or until the said service should be so determined as aforesaid.*]

3. The plaintiff by reason thereof has lost the wages and advantages which he would have derived from said service, and has remained unemployed for .

The plaintiff claims \$ and costs.

(*Formal parts: see No. 125.*)

288

Defence.

Service deter-
mined by
notice.

It was part of the said agreement that the plaintiff's service thereunder might be determined at any time [*as may be the case, e. g.,* by either the plaintiff or the defendant giving one calendar month's notice to the other of them to determine the said service] and* one calendar month before the alleged dismissal of the plaintiff the defendant [*or plaintiff*] gave to the plaintiff [*or defendant*] one calendar month's notice of his intention to determine the said service.

N.B.—*All that precedes the * may be omitted if the statement of claim alleges that the service was determinable by notice.*

289

Defence.

Dismissal for
misconduct.

Before the dismissal of the plaintiff the plaintiff misconducted himself by [*according to the facts, e.g.,* wilfully disobeying the reasonable orders of the defendant given in the course of said service, *or* by habitually neglecting his duties in the said service and failing to perform the service, *or* by dishonestly converting to his own use money which he had received to the use of the defendant, and the defendant therefore discharged the plaintiff from the said service].

290

Defence.

Dismissal for
incompetence.

The defendant was induced to make the agreement in the statement of claim alleged [*or* to take the plaintiff into his service] by the plaintiff's representing and warranting that he, the plaintiff, was reasonably competent to perform the duties of (*mentioning the capacity in which he was employed*) whereas the plaintiff was not and has not since been reasonably competent to perform the said duties and the defendant therefore rescinded his agreement with the plaintiff and dismissed the plaintiff from his said service.

291

Another form.

For a form of claim for wrongful dismissal of a general agent for the sale of a cream separator, see Glenn v. Rudd, 1902, 3 O. L. R. 422.

SECTION XXXVI.—MORTGAGE.

*(Formal parts: see No. 123.)***292**

Claim for foreclosure or sale.

1. Under and by virtue of an indenture (*or other document*), dated, &c., and made, &c. [and a transfer thereof, made by indenture, dated, &c., and made, &c.] the plaintiff is a mortgagee [*or, an equitable mortgagee*] of [*or, is entitled to a lien upon*] certain freehold property [*or leasehold, or other property, as the case may be*] therein comprised, being (*insert a general description of the property*), for securing the sum of \$ and interest.

2. The time for payment has elapsed, and no sum has been paid on account of principal or interest, [*or, \$ has been paid on account of principal, and \$ on account of interest*].

[*Or* 2. By the said mortgage it was provided that in default of the payment of the interest secured by said mortgage the principal thereby secured should become due and payable at the option of the plaintiff, and default has been made in payment of the interest which fell due on the day of].

3. [*If so*, in and by the said mortgage the defendant covenanted to pay the principal money thereby secured and interest as provided in the said mortgage].

4. There is now due under and by virtue of the said indenture of mortgage, for principal money the sum of \$, and for interest the sum of \$.

5. The plaintiff has not been in occupation of the said mortgaged premises, or of any part thereof, [*or, the plaintiff has been in the occupation of the premises, or of some part thereof, from the day of , in the year to the day of , in the year*].

6. The defendant *C.D.* is entitled to the equity of redemption in the said lands [*or, the premises subject to such lien*].

7. By the said mortgage the defendant covenanted that on default the plaintiff should have quiet possession of the lands comprised in the said mortgage free from all incumbrances, but the defendant still remains in possession of the said lands and refuses to deliver up possession thereof to the plaintiff.

The plaintiff therefore claims:

1. Payment of the said sum of \$ and interest thereon and the costs of this action, and in default thereof that the equity of redemption in the said lands may be foreclosed.

[Or, that in default thereof the said mortgaged premises may be sold and the proceeds of sale applied in or towards payment of the said debt and costs, and that the defendant C.D. may be ordered to pay the balance of the said mortgage debt and costs after deducting the amount realized by such sale.]

2. Judgment for the immediate recovery of the said sum of \$ interest and costs of this action.

3. Recovery of possession of the said lands.

4. For the purposes aforesaid all proper directions to be given and accounts taken.

5. Such further or other relief as the nature of the case may require.

(Formal parts: see No. 123.)

293

Claim for redemption.

1. Under and by virtue of an indenture (or other document) bearing date, &c., and made between (parties) the plaintiff is entitled to the equity of redemption in certain [freehold] property therein comprised, being (insert description of property) which was originally mortgaged for securing the sum of and interest thereon.

2. The defendant C.D. is now, by virtue of the said indenture, dated the day of, &c., the mortgagee of the said lands, and entitled to receive the principal money and interest remaining due upon the said mortgage.

3. The amount of principal money and interest now due upon the said mortgage is the sum of or thereabouts.

4. The plaintiff has made, or caused to be made, an application to the said C.D., to receive the sum of , and any costs justly payable to him and to re-convey the said mortgaged property to the plaintiff upon payment thereof, and of any costs due to him in respect of the said security, but the said C.D. refuses so to do.

The plaintiff claims:

1. To redeem the said mortgaged property, and to have a re-conveyance of the same made to him upon payment of the principal money and interest and costs due and owing upon the said mortgage.
2. For the purposes aforesaid all proper directions to be given and accounts taken.
3. Such further or other relief as the nature of the case may require.

(Proceed as in No. 293 to end of paragraph 2.)

3. On the 14th day of April, 19 , the defendant obtained possession of the said mortgaged premises, and has ever since continued in possession and in receipt of the rents and profits thereof.

294

Claim for redemption, charging mortgagee with waste and dilapidation.

4. At the time the defendant obtained possession of the said premises, they were in the occupation of one A.W., as a tenant to the plaintiff, at a rental of \$50 per month; and the said A.W. was a careful and respectable tenant, and had always paid his rent punctually, and had kept the said premises in proper repair; and the said A.W. was ready and willing and offered to attorn to the said defendant upon the same terms as he had held the said premises from the plaintiff; but the defendant refused to accept his attornment, and compelled him to quit the said premises.

5. The defendant subsequently rented the said premises to one O.D., his brother, for the sum of \$30 per month rent, and the said O.D. has been in the occupation of the said premises, at such rental, since the 1st day of May, 19 ; and the defendant refuses to give the plaintiff credit for more than the said rental of \$30 per month, during the time the said O.D. has been in the occupation of the said premises, although such rental is much less than the plaintiff could have obtained for the said mortgaged premises from the said A.W., and from other persons, had he used reasonable care and diligence in renting the said premises, as the defendant well knew (a).

6. The said O.D. during his said tenancy, has committed great waste and destruction upon the said premises, by pulling down and removing therefrom a certain barn and stable, and

(a) *Merriam v. Cronk*, 21 Gr. 60.

has suffered the houses and buildings upon the said premises to become greatly dilapidated; and the said defendant is liable to the plaintiff for the said waste and dilapidation.

7. The plaintiff claims that the damages he has sustained, by reason of the said waste and dilapidation of the said mortgaged premises, ought to be charged against the defendant, in taking his accounts as mortgagee in possession; and that the defendant is also chargeable with a large sum for rents of the said premises, which he might have received, but for his wilful neglect and default.

(Add prayer, as in Form No. 293, to the end of paragraph 1, and continue thus.)

2. An account with yearly rests of rents and profits of the premises comprised in the said mortgage received by the defendant or by any other person for his use, or which, without his wilful neglect and default, might have been so received.

3. A direction that an inquiry be made whether the said mortgaged premises have become depreciated, by reason of the waste and dilapidations aforesaid, to any and to what extent; and that what shall appear due to the plaintiff, in respect of such depreciation, be set off against the amount which may be found due to the defendant for principal, interest and costs; and that the balance (if any) in favour of the plaintiff, may be ordered to be paid by the defendant to the plaintiff.

(Add clauses 2 and 3 of claim, as in form No. 293.)

(Formal parts: see No. 123.)

295

Claim by an equitable mortgagee, by deposit, for foreclosure or sale.

1. On or about the 12th of May, 19 , the defendant *M.R.*, then of, &c., applied to the plaintiff for the loan of \$150; which the plaintiff agreed to advance, as to \$100 forthwith, and as to the remaining \$50 when the defendant should apply for the same; and it was agreed that the defendant should give his promissory note for the said sum and interest, as hereinafter mentioned; and should deposit the title deeds hereinafter mentioned as a further security for such loan.

2. The plaintiff accordingly lent and advanced to the defendant the sum of \$100 on the said 12th of May, 19 ; and the defendant signed and delivered to the plaintiff his promissory note in the words and figures following: (*set out promissory note.*)

3. At the same time the defendant deposited with the plaintiff the title deeds relating to (*describing land*) which had been conveyed to the defendant in fee simple, but no memorandum of such deposit was then, or has since been, given to the plaintiff.

4. On or about the 4th of June, 19 , the defendant applied to the plaintiff to advance him the further sum of \$50, in accordance with the agreement hereinbefore stated; and accordingly the plaintiff advanced the defendant the said sum of \$50 on the said 4th of June, 19 ; and the defendant signed and delivered to the plaintiff a promissory note in the words and figures following (*set out promissory note*).

5. In or about the month of June, 19 , the defendant applied to the plaintiff to advance him the further sum of \$60 for a week, under special circumstances, in order to save him the expense of a journey to London; and the defendant agreed to repay the plaintiff the sum of \$60 in a week's time, and also \$10 for the accommodation. The plaintiff accordingly advanced and paid the said sum of \$60 to the defendant; who at the same time gave him a memorandum in the words and figures following: (*set out memorandum*).

6. The defendant made default in payment of the said sum of \$60 and interest; and in the month of July or August, 19 , the plaintiff had an interview with the defendant, and then proposed that the defendant should execute to him a legal mortgage of the said freehold premises, of which the title deeds had been so deposited as aforesaid, together with certain leasehold property at C., which the defendant then stated he had recently agreed to purchase; to secure the said several loans and interest thereon, at the rate of \$5 per cent. per annum: to which proposal the defendant agreed; but such mortgage was never completed.

7. The whole of the three several sums of \$100, \$50, and \$60, amounting together to the sum of \$210, together with interest thereon, still remains due from the defendant to the plaintiff.

8. The defendant subsequently became involved in pecuniary difficulties; and on or about the 18th of October, 19 , he left his home, and has not since been seen nor heard of, although repeated and diligent inquiries have been made for him.

The plaintiff claims:

1. An account of what is due to the plaintiff on the security of the said deposit of deeds; and that the de-

fendant may be ordered to pay to the plaintiff what shall, on taking the said account, be found due to him, together with the costs of this action, by a short day to be appointed for that purpose; and, in default of such payment, that the defendant may be foreclosed of all right and equity of redemption in the said hereditaments at E. aforesaid.

2. A conveyance of the legal estate in said hereditaments or an order vesting all the estate and interest of the defendant in the plaintiff, or a sale thereof, and the application of the produce of such sale to the satisfaction of what shall be found due to the plaintiff.

3. All necessary directions for the above purposes.

4. A receiver of the rents and profits of the said hereditaments.

5. Such further or other relief as the nature of the case may require.

(*Formal parts: see No. 123.*)

296

Claim by personal representative of deceased mortgagee to enforce mortgage given to secure maintenance of mortgagee and his wife.

1. Under and by virtue of an indenture of bargain and sale bearing date the 11th day of February, in the year 19 , and duly registered in the Registry Office of the County of Grey on the 8th day of February, in the year 19 , made between *R.E.*, since deceased, of the first part, the plaintiff his wife of the second part, and the said defendant *C.E.* of the third part, the said *R.E.*, for the expressed consideration of ten shillings and other considerations mentioned in the second paragraph hereof, granted to the said defendant *C.E.*, in fee, the lands and premises therein mentioned, being composed of the (*describe lands*), and the plaintiff released her dower in the said lands.

2. The object of the said *R.E.* and the plaintiff was to secure to themselves and to each of them a comfortable support and maintenance during their natural lives and the life of the survivor of them, and it was agreed between the said *R.E.*, the plaintiff, and the said *C.E.*, as the consideration for the conveyance of the said land by the said *R.E.*, and the release of her dower therein by the plaintiff, that the said *C.E.*, his heirs and assigns, should pay, furnish and deliver to the said *R.E.* and the plaintiff in each year during their natural lives, \$30, five barrels of flour, one barrel of salt pork, thirty bushels of potatoes, fodder for two cows and six sheep every

winter, and provide pasturage for two sheep during the ensuing summer, haul and chop firewood, allow to the said *R.E.* and the plaintiff four acres including the dwelling house and garden on said Lot twenty-three, put in, cut crop and barn all produce thereof and therefrom on or before the 1st day of January in each and every year, and chop firewood for the use of the said house during both winter and summer, and in the event of the plaintiff surviving her said husband, the said *C.E.* agreed to furnish her during her natural life with the said house, land, and firewood for the use of the house, and half the above provision, that is to say, \$15, two and a half barrels of flour, half a barrel of salt pork, fifteen bushels of potatoes, fodder with hay for one cow, and three sheep every winter, and provide pasturage for one sheep during the summer.

3. With the object and intention of carrying out the said agreement and securing the performance thereof, the said defendant *C.E.*, by indenture of bargain and sale by way of mortgage, bearing date the 11th day of February, 19 , and duly registered in the Registry Office for the County of Grey, on the 18th day of February, in the year 19 , granted and conveyed to the said *R.E.* the elder in fee, the said lands and premises for securing payment annually of the said sum of \$30, and the performance annually of the other acts and conditions set forth in the second paragraph hereof, to and for the benefit of the said *R.E.* the elder and the plaintiff, as by the said indenture, reference being thereunto had, will more fully appear.

4. Upon payment annually of the said sum of \$30, to the said *R.E.* and the plaintiff, or in case of the death of the said *R.E.* one-half thereof to the plaintiff, and upon performance of the acts and the furnishing of the said goods and chattels mentioned in the second paragraph hereof, the said mortgage was to become void; and the said *C.E.* covenanted with the said *R.E.* to pay the said sum of \$30, and to furnish and provide the plaintiff with the said goods and chattels, house and land, fodder, pasturage and firewood, and to put in, cut crop, and barn the produce thereof and therefrom on or before the 1st day of January in each and every year, and chop firewood for the use of the said house during both winter and summer, or in case of the death of either of them the said *R.E.* or *S.E.* to pay and furnish one-half of the said sum and produce to the survivor.

5. The plaintiff was not made a party to the said mortgage, nor did the said *C.E.* enter into any covenant with her, al-

though it was intended and agreed that her support and maintenance in lieu of dower should be, as the plaintiff submits that it in fact is, charged upon the said lands.

6. The plaintiff would not have released her dower in the said lands but for the purpose of obtaining and securing such maintenance and support.

7. On or about the 19th day of June, in the year 19 , the said *R.E.* died intestate, leaving him surviving the plaintiff, his widow, and the said defendants *C.E.*, *J.E.*, *F.E.*, *D.E.*, *S.E.* and *A.E.*, his only children and heirs-at-law; and letters of administration of the estate of the said *R.E.* were duly granted by the proper Court to the plaintiff, and she is now the administratrix of his estate.

8. Under and by virtue of an indenture of bargain and sale made in or about the year 19 , and duly registered in the Registry Office of the County of Grey, the defendant *C.E.* conveyed to the said defendant *J.E.* the equity of redemption in the said lands, in consideration of \$1,000 and subject to the said mortgage.

9. No payment was ever made by the said *C.E.* on account of the said annual sum of \$30 to the said *R.E.*, or to the plaintiff during the lifetime of the said *R.E.*, nor has it been paid to the plaintiff, as his administratrix, since his death.

10. The defendant, *C.E.* continued to reside with the plaintiff on the said farm, after the death of the said *R.E.*, until the spring of the year 19 , and the plaintiff during that time was furnished with the provisions required by the said mortgage to be supplied to her.

11. Since the spring of the year 19 , the plaintiff has received neither money nor provisions from the said *C.E.*, or *J.E.*, or from any other person on their or either of their accounts, but therein they have wholly failed and made default, by reason whereof the plaintiff submits that upon the true construction of the proviso hereinbefore set forth, she is entitled to call in and have paid to her the said annual sum of money and the value of the goods and chattels agreed to be furnished and supplied for her maintenance.

12. The plaintiff further submits that she is entitled to have an account taken of the value of the said annual maintenance, and to have the same paid to her.

13. The said *R.E.* has not, nor has the plaintiff since his death, been in the occupation or possession of the said lands

and premises or any part thereof, except the four acres mentioned in the second paragraph hereof.

14. There is now due on the said mortgage for principal and interest, the sum of \$400, besides the value of the said annual maintenance.

15. The defendants, some or one of them, are entitled to the equity of redemption of the said mortgaged premises.

The plaintiff claims:

1. An account to be taken of the value of the said annual maintenance, and of the amount due and payable to the plaintiff upon the said mortgage.

2. An order or direction that the said defendant *C.E.* do pay the same and the costs of this action, and in default of such payment, that the said lands or a competent part thereof be sold; and the proceeds applied in or towards payment of the plaintiff's said claim, and that the defendant *C.E.* do pay the deficiency (if any) after the said sale.

3. For the purposes aforesaid, all proper directions to be given and accounts taken.

4. Such further and other relief in the premises as may seem meet.

(*Formal parts: see No. 123.*)

Between—*S.M.* by *J.R.*, her next friend, Plaintiff,
and
P.E., *M.C.*, and *S.C.E.*, *P.E.*, and *P.E.*
infants under the age of twenty-one
years, and *B.F.*, *T.M.*, and His Ma-
jesty's Attorney-General for the Pro-
vince of Ontario, Defendants.

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1. Under and by virtue of an indenture of bargain and sale, bearing date the 9th day of September, A.D. 19 , and duly registered in the Registry Office of the County of , on the 26th day of September, A.D. 19 , made between *W.T.*, since deceased, of the first part, the plaintiff, his wife, of the second part, and the said defendant *P.E.*, of the third part, the said *W.T.*, for the expressed consideration of \$800, granted to the said defendant *P.E.*, in fee, and the plaintiff released her dower in, the lands

Claim by personal representative of deceased mortgagee to enforce mortgage given to secure payment of a sum of money or for maintenance of mortgagee and wife at mortgagor's election.

and premises therein mentioned, being composed of (*describe lands*).

2. No part of the said consideration was ever paid in money, but the object of the said *W.T.* and the plaintiff was to secure to themselves and each of them a comfortable support and maintenance during their natural lives, and the life of the survivor of them, and it was agreed between the said *W.T.*, the plaintiff, and the said *P.E.*, as the consideration for the conveyance of the said land by the said *W.T.*, and the release of her dower therein by the plaintiff, that the said *P.E.*, his heirs and assigns, should furnish and deliver to the said *W.T.*, in each year, during the term of his natural life, four barrels of merchantable flour, one of which should be delivered every three months, commencing on the 1st day of October, 19 , and also one barrel of merchantable pork, to be delivered on the 1st day of January in each year; that he should also give the said *W.T.* the use and occupation of a house and an acre of land adjoining it, and plough the said land yearly for him, and should also yearly furnish and deliver to the said *W.T.* sufficient firewood for his use at the said house, and should cut the same if the said *W.T.* from age or sickness should be unable to do so; and the said *P.E.* further agreed to keep for said *W.T.* yearly, two cows, and to furnish him yearly with six yards of flannel, all wool, and six yards mixed with cotton, and in the event of the plaintiff surviving her said husband, the said *P.E.* agreed to furnish her with the said house, land, keep of cows, firewood and flannel, and to deliver to her two barrels of flour and half a barrel of pork during each year of her natural life.

3. With the object and intention of carrying out the said agreement, and securing the performance thereof, the said defendant, *P.E.*, by indenture of bargain and sale, by way of mortgage, bearing date the 9th day of September, A.D. 19 , and duly registered in the County of , on the 3rd day of February, A.D. 19 , granted and conveyed to the said *W.T.*, in fee, the said lands and premises for securing payment of \$800 and interest by the said *P.E.* to the said *W.T.*, on the 1st day of January next ensuing the date thereof.

4. In lieu of payment of the said sum of \$800 and interest, and as an alternative condition, upon the fulfilment of which the said mortgage should become void, it was expressed in the proviso for repayment that the said *P.E.* might substitute the performance of the acts and the furnishing of the said goods and chattels mentioned in the second paragraph hereof, and

the said *P.E.* covenanted with the said *W.T.* to pay the sum of \$800, or to perform the said acts and furnish the said provisions to the said *W.T.* and to the plaintiff.

5. The plaintiff was not made a party to the said mortgage, nor did the said *P.E.* enter into any covenant with her, although it was intended and agreed that her support and maintenance in lieu of dower should be, as the plaintiff submits that it in fact is, charged and secured upon the said lands.

6. The plaintiff would not have released her dower in the said land but for the purpose of obtaining and securing such maintenance and support.

7. On or about the 14th day of February, A.D. 19 , the said *W.T.* died intestate, leaving him surviving the plaintiff, his widow, who is the *S.T.* mentioned in the proviso in the said mortgage contained, and letters of administration to the estate of the said *W.T.* were duly granted by the proper Court to the plaintiff, and she is now the administratrix of his estate.

8. Subsequently to the death of the said *W.T.*, the plaintiff intermarried with and became the wife of the said defendant *T.M.*

9. No part of the said sum of \$800 and interest was ever paid by the said defendant *P.E.* to the said *W.T.* in his lifetime, nor has it been paid to the plaintiff, as the administratrix of his estate, since his death.

10. The defendant *P.E.* did, during the lifetime of the said *W.T.*, deliver to him the goods, provisions and chattels, and perform the work and labour in the said proviso mentioned.

11. Upon and after the decease of the said *W.T.*, the said *P.E.* did not furnish, and has not furnished or provided the plaintiff with the goods and chattels, or the house and land, agreed to be furnished and provided during the term of the plaintiff's life, but therein has wholly failed and made default, by reason whereof the plaintiff submits that upon the true construction of the proviso hereinbefore set forth, she is entitled to call in and have paid to her the whole of the money and interest secured by the said mortgage.

12. The plaintiff further submits, that even if this Honourable Court should not be of opinion that she is entitled to call in and have paid to her the whole of said principal money and interest secured by said mortgage, yet she is nevertheless entitled to have an account taken of the value of the

said annual maintenance, and to have the same paid to her by the said defendants, or that she is entitled to have the value of her dower in the said lands ascertained and paid to her by the said defendants.

13. The said *W.T.* was not, nor has the plaintiff since his death, been in the occupation or possession of the said lands and premises or any part thereof.

14. There is now due upon the said mortgage for principal \$800, and for interest \$500.

15. The defendant *P.E.* granted and released his equity of redemption in the said lands to his son, *J.E.*, but the conveyance thereof has not been registered. The said *J.E.* afterwards, and on or about the 19th day of July, A.D. 19 , died intestate, leaving his widow, and the above named defendant *M.C.* (who has since intermarried with and become the wife of the defendant *B.F.C.*), and the defendants *S.C.E.*, *P.E.* and *C.E.*, his children and heirs-at-law, infants within the age of twenty-one years, him surviving.

16. The said *W.T.* has no relatives or connections in Ontario except the plaintiff, and the plaintiff has been unable to ascertain or discover his heirs-at-law or next of kin.

17. The defendants, or some of them, are entitled to the equity of redemption of the said mortgaged premises.

The plaintiff claims:

1. An account of the principal money and interest due upon the said mortgage, and an order or direction that the defendants do pay the same, and in default of such payment that the equity of redemption in the said lands and premises be foreclosed.

2. Or an account of the value of the said annual maintenance, or the value of the dower of the plaintiff in the said lands at the time of the death of her said husband, and an order or direction that the said defendants do pay the same, and in default thereof that the equity of redemption in the said lands may be foreclosed.

3. The costs of this action.

4. For the purposes aforesaid all proper directions to be given and accounts taken.

5. Such further and other relief in the premises as may seem meet.

(*Formal parts: see No. 123.*)

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1. Under and by virtue of an indenture dated the 10th day of November, A.D. 19 , and duly registered in the Registry Office of the County of Wentworth, on the 11th day of the same month, made between one *D.W.*, therein described, of the first part; *A.W.*, wife of the said *D.W.*, who joined in the said indenture for the purpose of barring her dower only, of the second part, and the plaintiff of the third part. The plaintiff is a mortgagee of all and singular (*describe the lands*), for securing payment of the sum of \$1,000 and interest at the rate of six per cent. per annum, which the said *D.W.* by the said indenture covenanted to pay as follows, that is to say, the said principal sum at the end of eight years from the 17th day of January, 19 , and the interest yearly at the rate aforesaid on the 27th day of the month of January in each year so long as the principal sum should remain unpaid, the first of such payments to be made on the 27th day of January, 19 .

Claim against representatives of deceased mortgagor for sale of mortgaged premises and for administration of his estate in the event of a deficiency.

2. The sum of \$210 has been paid on account of interest and nothing on account of principal.

3. The plaintiff has not been in the occupation of the said premises or any part thereof.

4. There is now justly due upon the said security for principal \$1,000 and for interest \$258.34.

5. On or about the 24th day of November, A.D. 19 , the said *D.W.* departed this life, having first duly made and published his last will and testament in writing duly executed so as to pass real estate according to the laws of this Province, and thereby, after making his debts a charge upon all his real and personal estate, he devised the said lot number 9 to his daughter the said defendant *M.S.*, wife of the said defendant *W.S.*; the said lot number 10 to his son, the said defendant *J.W.*; and the said lot number 7 to his daughter, the said defendant *M.M.*, wife of the said defendant *R.M.*, during her natural life, and after her decease to the said defendant *D.M.* and his heirs.

6. The said defendants, in the last paragraph mentioned, or some of them, are entitled to the equity of redemption of the said mortgaged premises.

7. The said testator appointed his wife, the said defendant *A.W.*, and the defendants *C.A.S.* and *J.G.*, executrix and executors of his said will, and on or about the 12th day of

December, 19 , the said three defendants last named obtained letters probate from the proper court in that behalf of the said will, and have taken upon themselves the execution thereof.

8. The said mortgaged premises are a scanty security for the principal and interest due upon the said mortgage, and it may be necessary to have the estate of the said *D.W.* administered and the proceeds applied in payment of his debts, including that of the plaintiff, under the order and direction of this Honourable Court.

9. The said defendants, *A.W.*, *S.W.* and *G.W.*, are devisees under the said will of all the lands of the said testator other than those comprised in the said mortgage.

Your plaintiff claims :

1. Payment of the said mortgage debt and interest and the costs of this action.

2. An order or direction that in default the said mortgaged premises be sold and the proceeds thereof applied in or towards such payment as aforesaid.

3. If necessary an order for the administration of the real and personal estate of the said *D.W.*, under the direction of this Court for the benefit of the plaintiff and the other creditors of the said *D.W.*, deceased.

4. For the purposes aforesaid all proper directions to be given and accounts taken.

5. Such further and other relief in the premises as the circumstances of the case may require.

SECTION XXXVII.—MERCHANT SHIPPING ACT, 1894 (a).

(*Formal parts: see No. 123.*)

299

Claim for limitation of liability of ship-owner, under the Merchant Shipping Acts

1. The plaintiffs are the owners of the British brig “*Edith Mary*,” of 248 tons burthen, as per register.

2. The said brig “*Edith Mary*” was, on Saturday, the 13th February, 19 , on a voyage, bound northward, in ballast; and during a severe gale of wind on that day, when off Port Hope, the said brig came into collision with a vessel called “*The Thomas Barker*,” and by such collision the said

“Thomas Barker” was sunk and totally lost, and all the crew but two were drowned.

3. The said “Thomas Barker” was the property of the defendant *T.B.*; and the vessel was laden with coal, the property of the defendants the *C.G.C., L.* There was not any passenger on board the said “Thomas Barker.”

4. The defendants *E.D., E.T.S., J.B., M.B., A.C.E., M.B.,* and *M.P.,* are respectively the legal personal representatives of *T.D., T.R.S., J.B., J.B., R.E., W.B.,* and *R.P.,* who formed seven of the crew of the said “Thomas Barker,” and who were respectively drowned. *J.D.,* another of the crew of the said “Thomas Barker,” was drowned, but he has not any legal personal representative. The defendants, *W.C.W.* and *J.M.D.,* the only other members of the crew, survived the said collision, and are now living. All the crew of the said “Thomas Barker” had on board the said vessel, at the time of the said collision, clothes, sea chests, bedding, and other chattels.

5. No passengers or cargo were on board the “Edith Mary” at the time of the collision aforesaid.

6. The defendant *T.B.* has threatened to take proceedings against the plaintiffs, as owners of the “Edith Mary,” to recover from them a very large sum for the loss incurred by him through the said collision. The defendants, *E.D., E.T.S., J.B., M.B., A.C.E., M.B.,* and *M.P.,* have severally commenced actions in the High Court of Justice, against the plaintiffs, to recover from them very large sums of money by reason of the loss of the lives of the seamen aforesaid, and the loss of their clothes and property; and such proceedings are still pending. The defendants *W.C.W.* and *J.M.D.* also threaten proceedings against the plaintiffs for the loss of their clothes and baggage; and the defendants, the *C.G.C., L.* claim a large sum of money from the plaintiffs for the loss of the cargo of the “Thomas Barker” by the collision aforesaid.

7. The total amount of the said several claims exceeds the sum of \$17,982, which is the value of the “Edith Mary,” reckoned at £15 sterling per registered ton.

8. The plaintiffs admit that they are answerable in damages in respect of the matters aforesaid in the manner mentioned in Part viii. of “The Merchant Shipping Act, 1894,” to the extent of £8 sterling per registered ton of the “Edith Mary” in respect of the claims aforesaid other than those in respect of the loss of the lives of the seamen aforesaid, and

in no event to a greater extent than £15 per registered ton of the said "Edith Mary" in respect of all the claims aforesaid, and they are desirous of having such limit of liability declared, and the amount thereof distributed, under the direction of this Honourable Court.

The plaintiffs claim:

1. A declaration of the amount of the plaintiffs' liability in respect of the matters aforesaid, according to the said Act, and an order or direction for the distribution of the same between the defendants, and all other persons who shall establish claims against the plaintiffs in respect of the matters aforesaid, by and under the direction of this Honourable Court.

2. An order staying the said actions so already commenced as aforesaid, or consolidating the same with this action and restraining the defendants and each of them from commencing and prosecuting any other action or actions against the plaintiffs, or any of them, touching the matters aforesaid, or any of them.

3. (*General relief, see No. 298.*)

SECTION XXXVIII.—MECHANICS' LIENS, ETC.

(*Formal parts: see No. 123.*)

300
Claim to enforce mechanic's lien. (a)

The plaintiff resides at the City of Toronto, in the County of York, and is a builder.

1. On or prior to the 11th day of November, 19 , the defendant was and she has ever since remained and now is the lessee of certain leasehold premises in the City of Toronto, in the County of York, more particularly described in the claim or lien hereinafter set forth.

2. On or about the said 11th day of November, the plaintiffs, who are mechanics, at the request of the said defendant, agreed to perform certain work and to furnish certain materials for the erection of a brick hotel upon the said land for the said defendant, and there was no agreement between the said defendant and the plaintiffs that the plaintiffs should not be entitled to a lien upon the said lands and buildings for the price of the said work and materials.

(a) See also Forms 622 to 625 and R. S. O. 1897, c. 153.

3. In pursuance of the said agreement, the plaintiffs did do a large amount of work upon and did furnish large quantities of materials, which were used in and about the erection of the said brick hotel upon the said lands, to the value of \$18,000, and completed the same on or about the 4th day of September, 19 , whereby the defendant became indebted to the plaintiffs for the said work and materials in the said sum of \$18,000.

4. The sum of \$15,000 has been paid on account of the said sum of \$18,000, leaving a balance of \$3,000 still due and payable to the plaintiffs.

5. On the completion of the said work the plaintiffs became and are entitled to a lien on the said lands for the said sum of \$3,000, under the provisions of "The Mechanics' and Wage-earners' Lien Act."

6. On or about the 21st day of September, 19 , the plaintiffs, in pursuance of the said Act, caused to be filed in the Registry Office in and for the City of Toronto a statement of their said claim, which statement is in the words and figures following, that is to say:

"J.E., of the City of Toronto, in the County of York, Claim registered. (b) builder, and W.B., of the same place, bricklayer, under 'The Mechanics' and Wage-earners' Lien Act,' claim a lien upon the estate or interest of M.A.T., of the said City of Toronto, in respect of the following work and materials, that is to say:

To amount of contract \$17,000

Bill of Extras.

To extra stone in foundation 500

To brick pointing 200

To second flats of extra $\frac{1}{4}$ bricks in thickness 300

\$18,000

Dec. 1.—By cash \$2,000

Dec. 22.—By cash 1,000

19 .

Jan. 5.—By cash 5,000

July 6.—By cash 7,000

15,000

Balance..... \$ 3,000

(b) See also Forms Nos. 1-3 of R. S. O. 1897, c. 153.

—which work was done and materials provided for the said *M.A.T.* on or before the 4th day of September, A.D. 19 , the amount claimed to be due or become due is the sum of \$3,000; the description of the land to be charged is as follows:—All and singular (*describe lands.*)

Dated at the City of Toronto, in the County of York, this 21st day of September, A.D. 19 .

(Signed) J. E. [L.S.]

(Signed) W. B. [L.S.]

Witness,

(Signed).

—which statement was verified by an affidavit of the plaintiffs, sworn before a Commissioner for taking affidavits in the said County of York, as required by the said statute.

7. The lands referred to in the first paragraph hereof, and particularly described in the said claim or lien hereinbefore set forth, are the lands occupied by and usually enjoyed with the said hotel.

Where priority over a mortgagee is claimed.

[8. The said lands are subject to a mortgage made by to the defendant *C.D.*, dated the day of and registered on the day of , which said mortgage is prior to the lien of the plaintiff, but the plaintiff claims that the work done and material provided by the plaintiff upon the said land and for which he is entitled to a lien, as aforesaid, have increased the selling value of the said land, and that under the provisions of the said Act, to the extent which such selling value has been increased, the plaintiff's lien is entitled to priority over the said mortgage of the said defendant *C.D.*]

The plaintiff claims:

1. An order that the defendant (*the owner*) do pay to the plaintiff the said sum of \$3,000, together with interest thereon and the costs of this action.

2. An order or direction that in default of such payment the estate and interest of the said (*owner*) in the said lands and buildings, or a competent part thereof, may be sold and the proceeds thereof applied in payment of the plaintiff's debt and the costs of this action.

Claim consequent thereon.

[2a. That the extent to which the selling value of the said land has been increased by the work and materials of the plaintiff and other lienholders of the same class, may be ascertained, and that the defendant *C.D.* (*the mortgagee*) may be ordered to pay the sum

so ascertained into Court to be applied towards the satisfaction of the lien of the plaintiff and the other lienholders of the same class, and in default that the said land may be sold, freed from the said mortgage, and that the increased price realized from such sale by reason of the work and materials of the plaintiffs and other lien holders of the same class aforesaid may be ascertained and applied towards the payment of the liens of the plaintiff and other lien holders of the same class.]

3. For the purposes aforesaid all proper directions to be given and accounts taken.

4. Such further and other relief as may seem meet.

SECTION XXXIX.—NEGLIGENCE.

[*Formal parts: see No. 123.*]

1. The plaintiff is a shoemaker, carrying on business at Toronto. The defendant is a soap and candle manufacturer at the same place.

301

Claim for personal injuries through negligence.

2. On the 23rd May, 19 , the plaintiff was walking eastward along the south side of King Street, in the City of Toronto, at about 3 o'clock in the afternoon. He was obliged to cross Yonge Street, which is a street running into King Street at right angles thereto. While he was crossing this street, and just before he could reach the foot pavement on the further side thereof, a two-horse van of the defendants under the charge and control of the defendant's servants, was negligently, suddenly and without any warning, turned at a rapid and dangerous pace out of King Street into Yonge Street. The pole of the van struck the plaintiff and knocked him down, and he was much trampled upon by the horses.

3. By the blow and fall and trampling the plaintiff's left arm was broken, and he was bruised and injured on the side and back, as well as internally, and in consequence thereof the plaintiff was for 4 months ill and suffering, and unable to attend to his business, and incurred heavy medical and other expenses, and sustained great loss of business and profits.

The plaintiff claims \$ damages, and his costs of action.

302

Defence to
foregoing
claim.

[*Formal parts: see No. 125.*]

1. The defendant denies that the van was the defendant's van, or that it was under the charge or control of the defendant's servant. The van belonged to John Smith, of , a carman and contractor, employed by the defendant to carry and deliver goods for him; and the persons under whose charge or control the said van was were the servants of the said John Smith.

2. The defendant denies that the van was turned out of King Street either negligently, suddenly, or without warning, or at a rapid or dangerous pace.

3. The defendant says that the plaintiff might and could by the exercise of reasonable care and diligence, have seen the van approaching him, and have avoided any collision with it.

303

Claims against
Railway Co.
by passenger
for personal
injuries.

[*Formal parts: see No. 123.*]

1. The plaintiff is, &c.

2. The defendants are a railway company incorporated (*as may be the case*) and empowered to carry passengers as common carriers.

3. The plaintiff on the day of , 19 , purchased from the defendants a first class ticket for a passage by the defendants' railway, and thereby became a passenger for the purpose of being carefully carried by the defendants upon their said railway, from to .

4. Whilst the plaintiff was such passenger the train on which the plaintiff was being carried came into collision with a truck which had been left upon the track by the negligence of the defendants' servants [*or by the negligence of the defendants' servants in not stopping the train before it so came into collision with the said truck*].

5. The car in which the plaintiff was being carried was by such collision thrown from the rails, overturned and thrown down an embankment, by reason of which the plaintiff received injuries (*giving the particulars*).

6. The plaintiff has in consequence been put to expense [*or has incurred liability*] for medical attendance and his transport to and from the hospital at , and his expenses there during a period of weeks, and has been during that time prevented from attending to his business

which is that of (*as may be the case*) and has lost the profits which he would have earned in his said business (*giving particulars where practicable.*)

[*Or, 6. By reason of the injuries aforesaid the plaintiff is permanently crippled and disabled from pursuing his business, and has suffered great pain and has also suffered and will suffer great loss and damage in his business.*]

The plaintiff claims \$ damages, and his costs of action.

[*Formal parts: see No. 123.*]

304

Another form.

1. The defendants are carriers of passengers upon a railway from Toronto to

2. In January, 19 , the plaintiff took a ticket from Toronto to , and was received by the defendants as a passenger to be by them safely carried in a train which started from Toronto for

3. Owing to the negligence of the defendants in the management of their railway, the train in which the plaintiff was travelling came into collision with an engine, at a short distance from Toronto.

4. The plaintiff was thrown from his seat by the said collision, and much injured about the head, and had his right arm broken.

5. [*The following paragraphs may be introduced by amendment to meet defence infra.* The defendants allege that the plaintiff accepted the sum of \$300 in full satisfaction of all cause of action which he might have on account of the said collision, but the facts are as follows:

6. A short time after the collision an officer of the defendants procured the plaintiff to accept the said sum in satisfaction by fraudulently representing that his injuries were of a temporary nature, and that if they should afterwards turn out to be more serious than he anticipated, he would still be able to obtain further compensation from the defendants.

7. The plaintiff, fully believing the said representations, and acting upon the faith thereof, was induced thereby to accept the said sum in satisfaction, and then accepted the same, subject to the express condition that he should not thereby exclude himself from further compensation from the defendants if his injuries should prove more serious than he then anticipated.

8. After the acceptance of the said sum in satisfaction, the injuries suffered by the plaintiff in the collision did turn out to be more serious than was anticipated at the time aforesaid, and thereupon the plaintiff commenced the present action.]

The plaintiff claims \$ damages, and his costs.

[*Formal parts: see No. 125.*]

305

Defence to
foregoing
claim.

1. Shortly after the collision referred to in the statement of claim, one of the officers of the defendants called upon the plaintiff for the purpose of ascertaining from him whether he intended to make any claim against the defendants arising out of the said collision.

2. At such interview the plaintiff informed the said officer that he did intend to make a claim against the defendants arising out of the said collision; and it was there and then agreed between the plaintiff and the said officer acting on behalf and by the authority of the defendants, that in consideration that the defendants would pay to the plaintiff a sum of \$300, he, the plaintiff, would accept such sum from the defendants in full satisfaction and discharge of all cause of action which he had or might have against the said defendants on account of the said collision.

3. Thereupon the said officer, acting on behalf of the defendants, paid to the plaintiff the sum of \$300, and the plaintiff received the same in full discharge of the aforesaid cause of action.

[*Formal parts: see No. 126.*]

306

Reply to foregoing defence where statement of claim not amended.

1. The defendants allege that the plaintiff accepted the sum of \$300 in full satisfaction of all cause of action which he might have on account of the said collision, but the facts are as follows:—

2. A short time after the collision an officer of the defendants procured the plaintiff to accept the said sum in satisfaction by fraudulently representing that his injuries were of a temporary nature, and that if they should afterwards turn out to be more serious than he anticipated, he would still be able to obtain further compensation from the defendants.

3. The plaintiff fully believing the said representations, and acting upon the faith thereof, was induced thereby to accept the said sum in satisfaction, and then accepted the same, subject to the express condition that he should not thereby exclude himself from further compensation from the defendants if his injuries should prove more serious than he then anticipated.

4. After the acceptance of the said sum in satisfaction, the injuries suffered by the plaintiff in the collision did turn out to be more serious than was anticipated at the time aforesaid, and thereupon the plaintiff commenced the present action.

[*Formal parts: see No. 123.*]

1. The plaintiff is the executor of the last will and testament of *A.B.*, deceased [*or is the administrator of the personal estate and effects which were of A.B. deceased, who died intestate*], and sues for the benefit of and on behalf of [*C.B.*, wife, and *D.B.* and *E.B.*, children, of the said *A.B.*].

2. The defendants are a railway company authorized to act as carriers of passengers on the railway between _____ and _____.

307
Claim against
Railway Com-
pany by exe-
cutor or ad-
ministrator of
a passenger
killed by neg-
ligence of
defendants,
under R.S.O.
1897 c. 166.

3. On or about the _____ day of _____, 19____, the said *A.B.* was a passenger on the said railway on a journey from _____ to _____, and required to be carried by the defendants for reward to them, upon the said railway on the said journey.

4. The train in which the said *A.B.* was so being carried as a passenger upon the said journey, came into collision (*as the case may be*).

5. In and by reason of the said collision, the said *A.B.* (*state injuries*) and in consequence of such injuries the said *A.B.* died on the _____ day of _____, 19____.

6. The said *A.B.* before the said time of his death was a _____, carrying on business as _____, at _____, and his said wife and children were entirely dependent upon his earnings as such _____, for their support and education, and in consequence of the death of the said *A.B.* his said wife and children have been left without the said means of support and the said children have been deprived of the said means of their education.

The plaintiff claims \$ _____ damages, and his costs of action.

[*Formal parts: see No. 123.*]

308

Claim against
a livery stable
keeper for not
taking proper
care of a horse.

1. The defendant is a livery stable keeper carrying on business at number Street in the City of Toronto.

2. In the month of 19 , the plaintiff entrusted the defendant with his horse upon the terms amongst others that the defendant should take proper care of the said horse in a separate stall in his stable for the plaintiff for the sum of \$ per week.

3. The defendant accordingly received the said horse for the purpose and on the terms aforesaid.

4. The defendant did not take proper care of the said horse, and did not keep the said horse in a separate stall, whereby the said horse was kicked and wounded by another horse in the said stable, and was thereby injured and became of no use to the said plaintiff.

The plaintiff claims \$ damages, and his costs of action.

SECTION XL.—PARTNERSHIP.

[*Style of cause: see No. 34.*]

309

Commence-
ment of plead-
ings in name
of a firm.

1. The plaintiffs are a partnership firm carrying on the business of at .

• 2. The defendants are a partnership firm carrying on the business of at .

[*Formal parts: see No. 123.*]

310

Claim against
new firm for
debt which the
new firm has
undertaken to
pay.

1. The defendants *A.B.* and *C.D.*, are a partnership firm carrying on at the business of under the name and style of which business was formerly carried on there by the said defendant *A.B.* and *G.H.* (*as the case may be*) under the [*same name and style or, as the case may be.*]

2. (*State the cause of action against the old firm.*)

3. On the day of 19 , the said partnership business up to that time existing between the said *A.B.* and *G.H.*, was dissolved [*by mutual consent or as the case may be*].

4. The said business became thenceforth carried on by the said *A.B.* and *C.D.*, and on the day of 19 , it was agreed orally [or by agreement in writing of that date or by letter or as the case may be] between the plaintiff and the defendant and the said *G.H.* that the said *G.H.* should be released and discharged from all liability in respect to the said indebtedness, and that the defendants should become liable to pay the same to the plaintiff [in equal payments of \$, on the days of , and in the year 19 , or as the case may be].

5. The defendants have paid (as the case may be) and the balance of \$ became due and payable on, &c., but the defendants have not paid the same or any part thereof.

The plaintiff claims \$ and his costs of action.

[Formal parts: see No. 123.]

311

Claim to wind
up partner-
ship.

1. From the day of down to the day of the plaintiff and the defendant *C.D.*, carried on the business of in partnership under certain articles of co-partnership dated, &c., and made between (name the parties), [or under a verbal agreement made between the plaintiff and *C.D.*, or through their respective agents, *E.F.* and *G.H.*].

2. The said co-partnership was dissolved [or expired] on the day of .

The plaintiff claims:

1. An account of the partnership dealings and transactions, between the plaintiff and the said *C.D.*, and a direction that the affairs and business of the said partnership be wound up and settled under the direction of this Honourable Court.

2. For the purposes aforesaid all proper directions to be given and accounts taken.

3. Such further or other relief as the nature of the case may require.

[Formal parts: see No. 123.]

312

1. The plaintiff and the defendant *C.D.*, are and have been since the day of co-partners in the trade or business of under articles of co-partnership

Claim to dis-
solve partner-
ship.

dated, &c., and made between, &c., [or under a verbal agreement made, &c.,] which partnership was to continue for years [or for an indefinite time].

2. The said business was carried on under the said agreement until without any difficulty warranting dissolution.

3. From the last mentioned day until the present time the said *C.D.* has greatly misconducted himself in the said business, by removing the books of the co-partnership from the shop or counting-house of the firm, and denying the plaintiff or debarring him from access thereto, by discharging the clerks or servants of the said firm, and engaging others in his own interest in their room; by making false entries in the said books, or improperly keeping the same.

4. The said defendant has also used the name of the firm for his own private purposes, and has applied the moneys of the partnership to his own individual use.

5. There is nothing in the said articles or agreement of co-partnership to justify such conduct on the part of the defendant.

6. The plaintiff has made frequent applications to the said defendant to desist from such conduct and to act in accordance with the said agreement and with his duty as a partner, but without effect.

7. The plaintiff, on the day of gave notice to the said defendant that the said partnership would be dissolved from the day of .

The plaintiff claims:

1. A declaration that the said partnership be dissolved, and a direction that the accounts thereof be taken, and the affairs thereof wound up and adjusted.

2. Such further or other relief as the nature of the case may require.

[*Formal parts: see Nos. 34 and 123.*]

313

Claim to wind up partnership and for receiver, alleging misconduct.

1. In the month of September, 19 , the plaintiff and the defendant agreed to enter into partnership in the business of brokers, to be carried on in the City of Toronto, under the name of *H. and J.*, on the terms following: The defendant, who was a bookkeeper and accountant, skilled in the business,

but without capital, was to conduct the business and keep the books and receive one-fourth of the profits; while the plaintiff, who was a physician practising at Barrie, unskilled in the business, was not to be bound to attend thereto, and was to advance to the firm capital for the purposes of the business, and was to receive three-fourths of the profits, but no written articles of partnership were executed.

2. The plaintiff, in pursuance of the said agreement, in the said month of September, advanced to the defendant, on behalf of the partnership, the sum of \$4,884 for the purposes of the said business.

3. The plaintiff had, prior to the said partnership, advanced to the defendant the sum of \$500 for the purposes of a joint speculation in stocks, which was still going on at the date of the said partnership.

4. The defendant neglected to keep proper or any books of the said business, or to make proper or any statements to the plaintiff in respect thereof, although the plaintiff frequently applied to him so to do.

5. The defendant was married to a sister of the plaintiff, and this connexion rendered the plaintiff unwilling to proceed to extremities against the defendant, notwithstanding his default aforesaid.

6. In the month of March last the plaintiff's said sister died, and immediately thereafter the plaintiff pressed the defendant for a statement of the said business, which the defendant promised to give, but he failed to do so; though he informed the plaintiff, as he had previously informed him, that the said business had made between \$600 and \$1,000 profit, which had been sufficient to pay the running expenses of the business, so that in effect the capital was intact.

7. Within a few days after the said last mentioned request, the defendant telegraphed the plaintiff to come to Toronto, and on his arrival the defendant informed him that he had made a loss in Canadian Bank of Commerce stock amounting to about \$700, but he gave no further statement, whereupon the plaintiff determined forthwith to dissolve the said partnership, and so informed the defendant, and the defendant agreed to such dissolution, and the same was effected and duly registered in or about the end of April, 19 .

8. The plaintiff thereupon insisted on the defendant furnishing him with books and statements of the said business, and the defendant admitted that there were none; but some

time thereafter the defendant presented to the plaintiff certain books which he had in the meantime prepared, and which he alleged contained the accounts of the said business.

9. In the month of January, 19 , the defendant had paid to the plaintiff \$500 in United States silver, equal to about \$480, which, with a small sum of about \$10, was the only sum received by the plaintiff for the said business during the said partnership.

10. Since the dissolution the said defendant has paid to the plaintiff the sum of \$480 in respect of the said business, and the plaintiff has collected from the assets of the said business about \$995; and save these moneys the plaintiff has received nothing in respect of the said business, and the plaintiff has been obliged to pay \$150 for a partnership debt.

11. The plaintiff has no assets of the said partnership, and the defendant alleges that he has no assets thereof, and that he handed over to the plaintiff all the assets thereof, and that the balance of the plaintiff's capital has been lost.

12. The plaintiff put the said books into the hands of an accountant, and has ascertained from him that, as the fact is, the said books are imperfect and do not disclose the transactions of the said business, many of which are entirely omitted therefrom; and even from the said books there would appear to be a balance unaccounted for in the hands of the defendant; and it further appears that the defendant took and used for his own purposes a sum of \$1,180, with which he does not charge himself.

13. Recently the plaintiff has ascertained, as the facts are, that the defendant in the month of December last realized an asset of the said business, consisting of stock in the Bank of Hamilton, of which he had given no account to the plaintiff in the said books, or otherwise, and the proceeds of which he has converted to his own use.

14. Recently the plaintiff has ascertained that, as the fact is, the defendant during the said partnership invested part of the funds of the said business in a loan to one *W.H.*, and the said *W.H.* is in respect of such advance a debtor to the amount of \$4,000; but the said advance, though made in the course of the partnership business, and with the capital aforesaid, was made in the defendant's name, and the defendant threatens and intends, and will unless restrained, collect the same and place it beyond the reach of the plaintiff.

15. The plaintiff cannot, without the assistance of this Honourable Court, discover the assets of the said business or

the true condition thereof; and the defendant, who is without means, will deprive the plaintiff of the large balance due to him unless he is restrained by this Honourable Court.

16. The defendant has in his hands or under his control divers assets of the said partnership, and if the same were collected the balance due to the plaintiff would be paid.

The plaintiff claims:

1. An injunction order restraining the defendant from collecting and getting in any part of the said partnership assets, and particularly the said sum due by the said *W.H.*, and that a receiver may be appointed of the said assets of the said partnership.

2. A direction that the accounts of the said partnership be taken, and the balance due the plaintiff ascertained and paid over, the plaintiff submitting and hereby offering to account and do in the premises as shall be right, and as he may be ordered.

3. All proper directions for the purposes aforesaid.

4. Such other and further relief as shall be just.

SECTION XLI.—PATENT.

[*Formal parts: see No. 123.*]

1. Before and at the time of the making of the letters patent next hereinafter mentioned the plaintiffs had discovered and were the sole, true, and first inventors of the improvements in machinery for the manufacture of looped or knitted fabrics in such letters patent mentioned; and no other person before or at such time made, used, exercised or vended the said improvements or invention.

2. On the 10th of October, 19 , letters patent of that day, under the Great Seal of the Dominion of Canada granted unto the plaintiffs, that they, their executors, administrators and assigns, or such others as the plaintiffs, their executors, administrators and assigns, should at any time agree with, and no others, from time to time, and at all times thereafter, during the term of fourteen years from the date of the said letters patent should and lawfully might make, use, exercise, and vend, within the said Dominion of Canada, an invention for "Improvements in Machinery for the Manufacture of Looped or Knitted Fabrics."

3. *Concise statement, from the specification, of the nature of the invention.*

314

Claim to restrain infringement of patent, and for account, and damages.

4. The said letters patent have never been impeached; and the same have, from the day of the date thereof, remained and now are in full force, and of valid and effectual authority; and the said improvement and invention was and is novel, useful and valuable; and from the day of the date of the said letters patent the plaintiffs have applied the said invention with great success; and have manufactured large quantities of looped fabrics, by means of machinery constructed according to the said invention; and have derived great profit from the manufacture of such looped fabrics.

5. In the month of _____, the plaintiffs discovered, for the first time, as the fact is, that the defendant has caused to be constructed for himself, and erected at L., several machines constructed according to the plaintiffs' said invention, or upon the principle of, or only colourably differing from the plaintiffs' said invention, and that by means of such machines the defendant is manufacturing large quantities of looped fabrics.

6. The defendant has made and is now making such goods as last aforesaid, and is selling the same, to the great prejudice and damage of the plaintiffs; and he has derived, and is now deriving large gains and profits therefrom.

7. The defendant has sold the looped fabrics so manufactured by him by means of such machines as aforesaid, at a great reduction on the price at which they had been sold previously by the plaintiffs; and the plaintiffs have been thereby compelled to reduce their charges for manufacturing such looped fabrics; to the great loss and damage of the plaintiffs.

8. The plaintiffs have frequently applied to the defendant, and requested him to discontinue the use of their said invention, and the infringement of their said patent, and to come to an account with the plaintiffs for the profits made by the defendant by such use and infringement; but the defendant has refused to comply with such requests.

The plaintiffs claim:

1. An account of the profits made by the defendant from the sale of looped fabrics manufactured by him by means of machines constructed according to the plaintiffs' said invention, or constructed upon the principle of, or only colourably differing from, the said invention; and an order for payment by the defendant to the plaintiffs of what, upon taking such accounts, shall be found due from him.

2. Payment of the amount of the damages sustained by the plaintiffs, by reason of the defendant infringing their said letters patent, beyond the amount which, upon taking the account aforesaid, shall appear to be the profits made by the defendant as aforesaid, to be ascertained by and under the direction of this Honourable Court; and an order directing the defendant to pay such amount to the plaintiffs.

3. An injunction restraining the defendant, his servants, agents, and workmen from making, using, or selling machines for the manufacture of looped fabrics constructed according to, or upon the principle of, or upon any principle only colourably differing from, the plaintiffs' said invention; and from selling looped fabrics manufactured by means of any such machine: except such fabrics as shall have been manufactured by the plaintiffs, or some person duly licensed by them.

4. The costs of this action.

5. (*General relief, see No. 314.*)

[*Formal parts: see No. 123.*]

315

1. By letters patent under the Great Seal of the Dominion of Canada, bearing date the tenth day of April, A.D. 19 : Claim to restrain infringement of patent, and for an account
 Reciting amongst other recitals that *M.N.* then of the Town of Brantford, in the County of Brant, builder, had then lately made application by petition to the Governor of said Province, in the manner provided by law, setting forth amongst other things that he claimed to be the original inventor or discoverer of "*M. N.'s Economical Drum-heater*," which said invention or discovery might be shortly described, reference being first had to the specification and drawing annexed to and forming part of such letters patent in the words in such letters patent in that behalf used, His Majesty, King Edward the Seventh, by and through His Governor-General of His said Dominion of Canada, did for himself his heirs and successors give and grant unto the said *M.N.*, his heirs, lawful representatives and assigns, the full and exclusive right and liberty of making, constructing and vending to others to be used, the said invention or discovery within the said Dominion of Canada, in such manner as to said *M.N.*, his heirs, lawful representatives and assigns or any of them should seem meet for and during and

unto the full end and term of fourteen years from the date of such patent.

2. The said letters patent were so granted under and by virtue of the sixty-first chapter of the Revised Statutes of Canada, entitled "*The Patent Act*," and the said *M.N.* at the time of his said discovery and invention and when he so applied for and when he so obtained such letters patent was a subject of His Majesty and a resident in the Dominion of Canada.

3. The said patent invention in so far as the purposes of this action are concerned, consists of, and in the specification so including such drawing is described as (*as in the specification*). And the said specification including the said drawing, besides describing in detail the various parts of the said machine and its mechanism, construction, operation, concludes with a claim which in part is as follows, viz.: The said *M.N.* thereby claimed as his invention such spiral flue in connection with such air pipe and also that such his invention is peculiarly adapted for heating rooms in houses and public buildings, and that by its use not only is a great saving of fuel effected but the air in rooms is rendered of a more uniform and equal temperature at top and bottom.

4. Upon obtaining such letters patent the said *M.N.* and the plaintiff entered into co-partnership in the manufacture and sale of such drums and drum-heaters according to the said patent invention, and continued in such trade and business during the lifetime of said *M.N.*

5. The said *M.N.* afterwards on the 10th day of December, A.D. 19 , died, leaving the plaintiff and *E.N.* his wife him surviving having on the 27th day of November, A.D. 19 , made his last will, whereby he willed that the plaintiff should thenceforth carry on such business, give one-half of the profits thereof to the said *E.N.*, and retain the residue for the plaintiff's own use; and the said *M.N.* thereby willed and devised all other his estate and effects, real, personal and otherwise, which should belong or appertain to him at his decease to his said wife, and thereby made her sole executrix of his said will; and the said *E.N.* duly proved such will in the Surrogate Court of the County of Brant, which was the proper Surrogate Court in that behalf.

6. The said executrix of the said *M.N.*, by indenture dated the 22nd day of May, A.D. 19 , made between her of the

first part and the plaintiff of the second part, for and in consideration of \$300 therein mentioned, sold and assigned to the plaintiff all her interest then to come in such letters patent, and in the said business.

7. The said indenture of assignment was duly recorded on the 3rd day of July, A.D. 19 , in the office of the Minister of Agriculture of Canada.

8. The plaintiff has ever since the death of the said *M.N.*, under and by virtue of the premises, carried on and is still carrying on the said business in his own name, and excepting, as hereinafter mentioned, all of such drums and drum-heaters manufactured and sold in such business, have always been and still are of the outward form of that shewn and designated by the letter A. upon the said drawing, but some thereof vary therefrom in some immaterial particulars, scarcely capable of detection, and all of them were and are constructed according to the said patent invention, and those constructed by the plaintiff and *M.N.* in his lifetime, and by the plaintiff since his death, have been and are offered for sale, and sold, some thereof by the trade name of "*M.N.* economical drum-heater," others thereof by the trade name of "*N.*'s patent heater," and the residue thereof by the trade name of "*N.*'s patent drum-heater," and each and every thereof had and has thereupon a raised bronze label, on which was inscribed "*M.* *N.*'s patent, patented April 10th, 19 ."

9. These drums and drum-heaters have, during all that time, been favourably known to the trade and to the public by such outward form thereof, and by each of those trade names, by such bronze-coloured label thereon, and have been and are, with continually increasing favour, known and inquired for and purchased by each of such trade names, as well as by such bronze labels, to the great gain and profit of the plaintiff in his said trade and business.

10. The defendant was never licensed or empowered by the plaintiff, nor by the said *M.N.*, his heirs, lawful representatives, or assigns, to make or sell machines wholly or in part thereof in accordance with the said patent invention or any part thereof, or in any wise to make, use or put in practice said patent invention, or any part thereof, or in any wise to counterfeit, imitate or resemble the same, or make or cause to be made any addition thereto, or subtraction therefrom, whereby to pretend himself the inventor or deviser thereof.

11. Yet the defendant, on the 29th day of February, A.D. 19 , or thereabouts, contrary to the provisions of the

said letters patent, and of the statutes in that behalf, and within the said Dominion of Canada, and Province of Ontario, counterfeited, and imitated the said patent invention by simply changing the form and proportion of, and making additions to, and subtractions from said "M. N.'s economical drum-heater," so patented as aforesaid, for the purpose of pretending himself the inventor of such counterfeit imitation and resemblance thereof, and the defendant then named his said pretended invention and discovery, "J. W.'s economizing heater for wood and coal."

12. The said pretended invention so named and designated "J. W.'s economizing heater for wood and coal," was and is according to, although it in fact, only imperfectly, and in an unnecessarily complex manner carries out the principle of, the said patent invention, so as aforesaid named and designated "M. N.'s economical drum-heater," and, in fact, only varies therefrom by and through the substitution, in the said pretended invention, of old and well-known and less simple and less effective mere mechanical equivalents for the said spiral flue and the position within the drum of the said air-pipe of the said patent invention, without any novelty or invention in such substitution, and without any useful purpose being thereby attained, by means whereof all drum-heaters made according to such pretended invention become much sooner filled and encumbered with soot, and are much more difficult to cleanse the soot from, and give out far less heat, and in a far less degree equalize the temperature at the top and bottom of the rooms in which they are used, than those constructed according to the said patent invention.

13. Nevertheless, the defendant applied to the Honourable the Minister of Agriculture for the Dominion of Canada for letters patent in that behalf, and upon such his application pretended and misrepresented to the said minister that his said pretended invention was a new and useful invention and discovery, and by means of such pretence and misrepresentation obtained letters patent under the Great Seal of the said Dominion of Canada, dated the 10th day of March, A.D. 19 , and similar in form to the letters patent so issued to the said M.N. as aforesaid, to be issued to him, the defendant in that behalf, which letters patent so issued to the defendant were and are upon and subject to the following amongst other conditions contained therein: that is to say, that if the defendant was not the first discoverer and inventor of the alleged invention therein mentioned, or if the same was known or in use in such Province before the same was invented by the

defendant, and before his application for those letters patent, then and in every such case such letters patent should cease and determine, and become null and void.

14. The defendant was not the first discoverer or inventor of the alleged invention in such patent, and such alleged invention was known and in use in said Province before the same was invented by the defendant, and before his application for such letters patent, and submits that by reason thereof such letters patent always were and are null and void.

15. The defendant now pretends that the said pretended patent invention is an improvement upon the said patent invention of the said *M.N.*, and is as such new and useful and patentable, which the plaintiff denies, and the said pretended patent so issued to the defendant as aforesaid was not granted in respect of any alleged improvement, and the defendant does not in his specification in that behalf so claim.

16. The defendant has continually since the said issue to him of the said letters patent for his said pretended invention, and under colour and pretence thereof, and within the Province of Ontario, and in fraud and wrong of the plaintiff, and to his great injury, manufactured, used and sold by a very great number of persons, and amongst others, by one *W.B.*, one *M.H.*, and one *J.C.*, for profit and gain to the defendant in that behalf, great numbers of drums and drum-heaters of such close outward resemblance to those drums and drum-heaters so manufactured and sold by the plaintiff as aforesaid as not to be distinguishable therefrom, unless by very minute inspection and examination, and constructed according to said patent invention of the plaintiff, but not thoroughly and properly carrying out the principles thereof, and being by reason thereof inferior articles, and of less value than those of the plaintiff above mentioned.

17. The defendant also in fraudulent and wrongful imitation of the said trade names and bronze-coloured label of the plaintiff, all of which were, in fact, well-known to the defendant, labelled and designated each of such drums or drum-heaters so by him, the defendant, manufactured and sold and licensed, caused and procured to be manufactured and sold as aforesaid, with a label in shape, size, colour and general appearance closely resembling the said label of the plaintiff, but having thereon the words "*W.'s Economizing Heater, patented March 10th, 19 ,*" and also advertised and offered for sale such drums and drum-heaters of defendant by trade names

closely resembling those of the plaintiff above mentioned, and also caused to be published in the public newspapers of Ontario, articles in the form of editorials, falsely, wrongfully and maliciously slandering and depreciating the said patent invention, drums and drum-heaters of the plaintiff, and comparing them falsely and disparagingly to and with the said pretended patent invention of the defendant and his said drums and drum-heaters, and in particular the defendant caused one of such false, wrongful, malicious, defamatory editorial articles to be published in the issue of the 30th December, A.D. 19 , of the *Hamilton Evening Times* newspaper, of the City of Hamilton, in the Province of Ontario, and in the issue of the 31st December, A.D. 19 , of the *Hamilton Evening Times*, of same place, to which the plaintiff refers for particulars thereof, and the defendant threatens and intends to, and unless restrained as hereinafter claimed will, continue such grievances.

18. By means of such wrongful and fraudulent devices the defendant has greatly interrupted and injured the plaintiff's said trade and business, and has so sold and so caused and procured to be sold, in divers places in the Province of Ontario, to divers of the public there (who otherwise would have purchased the drums and drum-heaters made by the plaintiff) the said drums and drum-heaters so fraudulently made, and caused to resemble the plaintiff's as aforesaid, and in particular, the defendant so sold and licensed, and caused and procured to be sold two of such drums and drum-heaters so resembling those of the plaintiff as aforesaid to one *D.T.*, of the Village of Paris, in the County of Brant, in said Province; two more thereof to one *G.H.*, of the same place; two more thereof to one *J.B.*, of the same place; two more thereof to one *R.O.C.*, of the City of Hamilton, in the said Province; two more thereof to *E.* and *G.M.*, of the same place; two more thereof to *W.B.*, of Hamilton aforesaid; two more thereof to *J.M.*, of Hamilton aforesaid; two more thereof to *A.W.*, of Hamilton aforesaid; four more thereof to the Trustees of the Pearl Street school-house, of St. Mary's Ward, in Hamilton aforesaid; two more thereof to *J.W.*, of Hamilton aforesaid; two more thereof to *M.H.*, of Hamilton aforesaid; two more thereof to *G.S.*, of Hamilton aforesaid; two more thereof to the *G.W.R. Coy.*, at Hamilton aforesaid.

19. The said inferiority of those drums and drum-heaters so sold and licensed, and caused and procured to be sold by the defendant in the manner aforesaid, together with their said similarity in appearance, and in the alleged trade names thereof, and the bronze coloured labels thereupon to those of

the plaintiff, also is calculated to injure, and in fact does wrongfully injure the plaintiff in his said trade and business, by damaging the public reputation of the said drums and drum-heaters of the plaintiff, for which they are designed and likely to be and are often mistaken.

The plaintiff therefore claims as follows :

1. A declaration that the said letters patent so issued to the defendant are and have always been null and void by reason of the aforesaid misrepresentation and misconduct of the defendant in obtaining the same, and by reason of the said want of novelty, in the said pretended invention of the defendant and by reason of its said want of usefulness and by reason of those letters patent including the same invention and discovery, or a material part of the same invention and discovery, as the prior letters patent so granted to the said *M.N.* as aforesaid.

2. An injunction restraining the defendant, his servants, workmen and agents, from manufacturing, using, selling, offering for sale or licensing or causing any other or others to manufacture, use, sell, offer for sale drums and drum-heaters or other machines constructed according to his said pretended patent invention, and from selling or offering or exposing for sale or disposing of or parting with the custody of any of the said drums or drum-heaters so by the defendant manufactured and offered for sale as aforesaid, or any other similar drums and drum-heaters bearing and having the above mentioned, or any other fraudulent and colourable imitation of the said trade name and style of the plaintiff thereon without the license and authority of the plaintiff in that behalf.

3. And also an injunction restraining the defendant, his servants, workmen and agents, from manufacturing, using, selling or disposing of or parting with the custody of, unless with the leave, and license of the plaintiff, any drum-heaters or other machines or any mechanism or apparatus calculated or intended to be used in or as parts thereof made in accordance with the said patent invention of the said *M.N.* or with colourable deviation therefrom, or with the substitution of mere mechanical equivalents for the same or some parts thereof, or otherwise in accordance with the said patent invention of the said *M.N.*, or by simply

changing the form or the proportion of the drum-heater or machine; whether the same be or be not also constructed according to the said pretended patent invention of the defendant.

4. An account of the gains and profits which the defendant has made as aforesaid and payment of the same to the plaintiff.

5. Damages for the wrongful acts of the defendant in the premises, and that all proper directions may be given and accounts taken in that behalf.

6. The delivery up to the plaintiff by the defendant of all drum-heaters and other machines, mechanism and apparatus in the possession or power of the defendant which have not been made by the plaintiff, or the plaintiff and the said *M.N.* or the said *M.N.* or his heirs, lawful representatives or assigns or by their or some of their license or authority and which have been made according to the said patent invention, or with such deviations or substitutions as aforesaid, or which are calculated and intended to be used as aforesaid, or which have the above mentioned or any other wrongful and fraudulent imitations of the said trade name and style of the plaintiff thereon.

7. The costs of this action.

8. Such further and other relief as may seem meet.

SECTION XLII.—PAYMENT INTO COURT.

[*Formal parts: see No. 125.*]

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Defence of
payment into
Court. (a)

The defendant as to the whole of the claim of the plaintiff [*or the whole action*] [*or as to the plaintiff's claim contained in the paragraphs of the statement of claim or as to the plaintiff's claim upon (e.g., the promissory note in the statement of claim mentioned or the plaintiff's claim for, as the case may be)*] brings [*or has paid*] into Court \$ _____, and says that that sum is enough to satisfy the plaintiff's claim, [*or the plaintiff's claim in said paragraphs mentioned, or in respect of the said promissory note, or the plaintiff's claim herein pleaded to.*]

For notice of payment into Court before such a defence, see No. 397.

For notice of acceptance of the sum paid in, see No. 398.

(a) See also No. 201.

SECTION XLIII.—PENALTIES.

*(Formal parts: see No. 123.)***317**

1. The defendant is indebted to the plaintiff in the sum of (\$200, or as the case may be), for that on the _____ day of _____, 19____ (a), the defendant (at an election holden in and for the Electoral District of _____, for the election of a member to serve in the Legislative Assembly of the Province of Ontario, wilfully voted without having at the time of his so voting all the qualifications required by law for entitling him to vote (or as the case may be under the provisions of *The Ont. Election Act* (c) contrary to "The Ontario Election Act." (b)

Claim for a penalty under "The Ontario Election Act."

The plaintiff claims the sum of \$ _____ by way of penalty and his costs of this action.

SECTION XLIV.—PERPETUATING TESTIMONY.

318

The formal parts of a statement of claim in an action to perpetuate the testimony of witnesses are the same as those in other actions. The statement of claim must state the matter touching which the plaintiff is desirous of taking evidence; and must shew that he has some interest in the subject; and claim directions for the examination of witnesses touching the matter so stated: to the end that their testimony may be preserved and perpetuated. It should also state the facts shewing that the plaintiff is unable to bring the question for which the testimony is required into immediate litigation. Where the action is brought by a person claiming honours, titles, &c., the Attorney-General must be made a party: see R. S. O. c. 324, s. 15.

Claim in action to perpetuate testimony. (d)

SECTION XLV.—PHYSICIANS AND SURGEONS.

*(Formal parts: see No. 123.)***319**

1. The plaintiff is a physician [or surgeon] duly authorized to practise as such in Ontario.

Claim for medical attendance.

(b) See R. S. O. 1897 c. 9, s. 195. The action is required to be commenced within one year after the act committed or the omission of duty complained of: R. S. O. 1897 c. 9, s. 195 (3).

(c) See R. S. O. 1897 c. 9, s. 181.

(d) As to how far this form of action can now be maintained, if at all: see *West v. Sackville* (1903), 2 Ch. 378.

2. The defendant is, &c.

3. The plaintiff between the day of , 19 , and the day of , 19 , rendered to the defendant [or to A.B. for and at the request of the defendant] professional attendance, advice and services, as such physician.

Or, The plaintiff between the day of , and the day of , 19 , attended the defendant at his request [or attended A.B. at the request of the defendant] as such surgeon, and operated on and administered treatment to him [or to the said A.B.] in respect of [a broken leg].

4. The reasonable charges due and payable for such attendance, advice and services amount to the sum of \$, an account for which has been rendered to the defendant on the day of , 19 , but the said charges have not been paid.

The plaintiff claims \$ and costs.

(Formal parts: see No. 123.)

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Defence and counterclaim to foregoing claim, unskilful treatment causing injury

1. The plaintiff so negligently and unskilfully performed a surgical operation upon the defendant's leg that the defendant's health has suffered, and he has become permanently lame and incapacitated from earning his living in his occupation of .

2. By way of counterclaim the defendant claims \$ damages from the plaintiff for the injury to the defendant caused by the plaintiff's said negligent and unskilful treatment of the defendant.

N.B. A statement of claim for damages for negligent and unskilful treatment may be framed from the above counterclaim.

SECTION XLVI.—QUI TAM ACTION.

(Formal parts: see No. 123.)

321

Claim in a Qui Tam action for the penalty for registering an interim copyright without publishing. (a)

1. The plaintiff is, &c., and sues in this action as well for His Majesty the King for the public uses of the Dominion of Canada, as for himself.

2. On or about the day of , 19 , the defendant caused to be inserted in the interim register of copyrights in the office of the Minister of Agriculture for the

(a) See R. S. C. c. 62, ss. 13 and 33 (2).

Dominion of Canada, the title or designation of a work called "The History of Jurisprudence," then about to be published in England and intended to be published in Canada.

3. The said work was published in England on the day of _____, 19____, but notwithstanding that more than one calendar month has elapsed from said date the said work has not been published in Canada contrary to the statute in that behalf.

The plaintiff as well for His Majesty the King as for himself claims \$100.

SECTION XLVII.—RECTIFICATION OF INSTRUMENTS.

(*Formal parts: see No. 123.*)

Between the Merchants' Bank of Canada,
Plaintiffs,
 and

*E.G., J.B.M., C.G., G.W.B., C.A.S., J.F.,
 C.F., R.J.C., J.A.M., and T.C.S., Execu-
 trix and Executor of O.T.M., H.McK., and
 A.K.,*
Defendants.

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Claim to
 correct error
 in description
 of lands in a
 Deed and
 Mortgage.

1. In and prior to the year 19____, the defendant, *H.McK.*, was the owner in fee simple of a certain parcel of land situate in the City of Hamilton, in the County of Wentworth, described as follows, that is to say: (*copy description of land*). This property the said *H.McK.*, on the 1st June, 19____, sold to the defendants, *G.W.B.* and *C.A.S.*, for the sum of \$1,375; no part of the said money was to be paid down, the agreement being that said *H.McK.* should convey the said lands to the defendants, *G.W.B.* and *C.A.S.*, who were upon such conveyance to mortgage the said lands in fee to the said *H.McK.*, to secure payment of the said sum of \$1,375, and interest at the rate of six per cent., at the end of ten years from the said 1st June, 19____, with interest payable yearly in the interim. At the time of the said sale the said parcel of land was fenced in, a tavern was built on part thereof, and the whole of the said land was used in connection with the said tavern which was then in the occupation of a tenant, and the said *H. McK.* owned no other portion of the said lot number _____.

2. In execution of the said agreement the said *H.McK.*, by indenture dated 1st June, 19____, conveyed the said lands, in fee simple, to said defendants, *G.W.B.*, and *C.A.S.*, who imme-

diately mortgaged the said lands in fee to the said *H. McK.*, to secure the payment of the sum of \$1,375, and interest at the times and in the manner hereinbefore mentioned, the said mortgage bearing date on 1st June, 19 , and being made by the said *G.W.B.* and *C.A.S.*, of the first part, *E.* the wife of said *G.W.B.*, who merely joined therein to bar her inchoate right to dower, of the second part, and the said *H. McK.* of the third part, and the said tenant of the said *H. McK.*, by the directions of the said *McK.*, attorned to and became the tenant of the said lands to the said *G.W.B.*, and *C.A.S.*, in pursuance of the terms of the said sale. The said deed of conveyance and mortgage of said lands were prepared by the defendants, *G.W.B.* and *C.A.S.*, and said lands were and are by mere error and inadvertence erroneously described in the said deed and mortgage, the description therein given being incorrect only so far as the metes and bounds of the said parcel are concerned, the said parcel being properly described as to the extent thereof, and as to being a part of the said original Township lot now a part of the City of Hamilton as aforesaid, but the point of commencement of the metes and bounds of the said parcel and the courses of the boundaries thereof are therein stated in these words, (*copy description*,) the error in the said description being that the position of the post therein referred to is stated to be on the limit between lots 13 and 14, instead of on the limit between lots 12 and 13, as the position of the said post in fact is, and the said post in fact was at the time of making the said deed and mortgage, and now is the north-west angle of King and Wellington streets aforesaid. The other courses of the boundaries given in the description contained in the said deed are wholly inapplicable to a parcel of land to be contained within the said boundaries, as the parcel so described would not from the relative positions of the said original Township lots 13 and 14, include any portion of the said original Township lot 13, beyond the imaginary line forming the extreme west boundary of the said lot 13. The said *G.W.B.*, *C.A.S.*, and *H. McK.*, at the time of the execution of the said deed and mortgage, believed that the post referred to as on the limit between lots 13 and 14, and being point of commencement was, in fact, the north-west angle of King and Wellington Streets aforesaid, and intended that such angle should be the point of commencement.

3. The said *H. McK.*, by an indenture dated 2nd January, 19 , and made for valuable consideration between the said *H. McK.*, of the first part, and the Imperial Bank of Canada, of the second part, bargained, sold, assigned, transferred and

set over to the said Imperial Bank of Canada, their successors and assigns, the said indenture of mortgage referred to in the second paragraph hereof, together with the said sum of \$1,375 and interest thereon from 1st December, 19 , (all prior interest having been paid,) and the said lands described in the first paragraph hereof, but by error and inadvertence the said lands were and are described in the said indenture of assignment in the same words as the same are described in the said deed and mortgage, the error therein being of precisely the same nature as that set forth in the second paragraph hereof, the description of the lands given in the said assignment being copied from that given in the said mortgage, without any knowledge of the error aforesaid. The estate, rights and interest of the said Imperial Bank of Canada in the said lands, mortgage, mortgage money, interest and assignment, became, and were and are vested in the plaintiffs, under and by virtue of an indenture of union, dated 27th February, 19 , made between the said Imperial Bank of Canada and the Merchants' Bank, whereby the property and effects of the said banks became amalgamated and vested in the plaintiffs, by their said corporate name, under the provisions of the "Imperial Bank Act, 19 ." The said indenture of union has been duly published in the Official Gazettes, as required by the said Statute.

4. The defendants *G.W.B* and *C.A.S.* sold a portion of the said lands to *R.R.W.* and *D.B.G.*, under whom the defendants *E.G.*, *J.B.M.*, *C.G.*, *G.W.B.*, as executors of *A.C.*, *R.J.C.*, *J.A.M.*, and *T.C.S.*, executrix and executor of *O.T.M.* and *A.K.*, respectively, claim title. The deeds of conveyance of the said portion sold to said *R.R.W.* and *D.B.G.*, describe the same correctly as being situated on the north-west corner of King and Wellington Streets, and on such sales the said *G.W.B.* and *C.A.S.* delivered possession of the portions so sold to the said *R.R.W.* and *D.B.G.*

5. All the interest which accrued due upon the said mortgage made by the said defendants *B.* and *S.*, to the defendant *McK.*, up to and inclusive of the instalment of interest which fell due on 1st December, 19 , has been fully paid and satisfied, but no further sum has been paid on account of interest, except by receipt of rents and profits as hereinafter mentioned, and the whole amount of principal thereby secured is now past due and wholly unpaid and unsatisfied.

6. The said Imperial Bank of Canada took possession of a portion of the said lands as mortgagees as aforesaid, on or about the 19th day of August, A.D. 19 , and of the residue of said lands about the 16th day of September, 19 , and

continued in possession thereof till the time of the amalgamation of the said bank with the plaintiff's bank hereinbefore mentioned, and the plaintiffs are now in possession of the said mortgaged lands.

7. The defendants, other than the defendant *McK.*, are entitled to the equity of redemption of the said mortgaged premises. The defendant *G.W.B.*, as well in his own individual interest as executor of the last will and testament of *A.C.*, deceased, the said *R.R.W.* and *D.B.G.*, and all the said defendants had actual notice and knowledge of all the facts and circumstances hereinbefore set forth before and at the time they severally acquired their respective estates and interests in the said mortgaged premises.

8. The plaintiffs have offered to the defendants, to join in and execute a proper deed or proper deeds to correct the said errors and requested the said defendants to join in and execute the same or that the said defendants, except said *H. McK.*, should pay off the said mortgage. but the said defendants neglect and refuse to comply with the said request.

The plaintiffs claim :

1. A direction that the said deeds of conveyance and mortgage and assignment thereof, in the first and second paragraphs hereof mentioned, be rectified by correcting the description of the lands therein referred to so as to describe the said lands as the same are described in the first paragraph hereof.

2. A declaration that the plaintiffs are mortgagees thereof, and entitled to have a lien thereon for the said \$1,375, and interest.

3. Payment of the said sum of \$1,375 and interest, and costs of this action; and in default thereof, that the equity of redemption of the said mortgaged premises may be foreclosed.

4. All other necessary directions for the purposes above aforesaid.

5. Such further and other relief as the nature of the case may require.

(*Formal parts: see No. 123.*)

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1. *M.E.*, late of, &c., widow, was for many years prior and down to, and at the time of her death hereinafter mentioned, seised or otherwise well entitled in fee simple of or to real estate of large value, consisting of houses and hereditaments situate in the counties of M. and E., and elsewhere.

Claim for appointment of a receiver of real and personal estate, at the instance of alleged heir at law and next of kin; pending litigation as to his title. (a)

2. The said *M.E.* was also, at the time of her death, possessed of, or entitled to, a large leasehold estate: consisting of houses and hereditaments situate in the counties of M. and E., and elsewhere; and also other personal estate, consisting of money, securities for money, and other property of very large value.

3. The said *M.E.* died intestate on or about, &c., a widow, and without issue.

4. At the time of the death of the said *M.E.* the plaintiff was, and he is, her heir-at-law; being the eldest son of *S.W.* the younger, late of, &c., deceased, who was the only brother of the said *M.E.*, and who died in her lifetime. The said *S.W.* the younger, and the said *M.E.*, were the son and daughter of *S.W.* the elder of, &c., and *M.* his wife, who died many years ago.

5. The plaintiff was also at the time of the death of the said *M.E.*, and he is now, one of her next of kin according to "*The Statute of Distribution.*" The only other next of kin of the said *M.E.* were and are *E.*, now the wife of *J.G.*, *A.W.*, and *J.W.*, who are the only other children of the said *S.W.* the younger who were living at the time of the decease of the said *M.E.*

6. Shortly after the death of the said *M.E.*, untrue information was given to His Majesty's Attorney-General for the Province of Ontario, that the plaintiff and his said brother and sister were illegitimate, and that the said *M.E.* had died without leaving any lawful heir or next of kin; and thereupon, and on the day of , 19 , a caveat was entered in the office of the Surrogate Clerk by His Majesty's Attorney-General for Ontario, on behalf of His Majesty, against the grant of letters of administration of the effects of the said intestate to any one except such person as should be nominated by or on behalf of His Majesty.

7. The rents of the said *M.E.*'s real estate, which consists in great part of divers small houses and tene-

(a) For another form, see No. 315.

ments, let to divers persons as weekly tenants, have run into arrear; and the tenants in possession refuse to pay any rent to the plaintiff; and very large sums are due in respect of the same rents; which are in danger of being lost, and in fact very large sums have already been lost in respect thereof.

8. The plaintiff has applied to the Surrogate Court of the County of _____, for the grant of letters of administration of the estate and effects of the said *M.E.* to him, as the lawful nephew, and one of the nearest of kin of the said *M.E.*; but by reason of the grant of such letters being opposed by His Majesty's said Attorney-General, under the circumstances aforesaid, the right to such letters of administration is now under litigation; and some time must necessarily elapse before the right of the plaintiff thereto can be determined.

9. Under the circumstances aforesaid there is no personal representative of the said *M.E.*

10. For the reasons aforesaid, the rents of the leasehold estate of said *M.E.*, which consists of divers small houses let out to weekly tenants, are likewise in arrear, and in danger of being lost; and a large portion thereof has already been lost.

11. Moreover, the houses and buildings on the said estate are falling into bad repair, and they require considerable outlay to keep them in proper condition; and the covenants to repair and insure contained in several of the leases under which the said *M.E.*'s leasehold estate is held have been broken; and the said leases are liable to forfeiture; and, indeed, the landlords of some parts of the said leasehold estate have already entered upon the same for breaches of covenant: whereby the same have become lost to the said intestate's estate.

12. The moneys and other personal estate of the said *M.E.* are likewise in danger of being lost for want of some person to collect and get in the same.

Receiver of
rents, etc.

13. The plaintiff submits that some proper person or persons ought to be appointed to receive the rents and profits of the said *M.E.*'s freehold and leasehold estates, and to collect and get in her personal estate, as hereinafter prayed.

14. At the time of the death of the said *M.E.*, there were in her house divers deeds, books, and documents belonging to her, and relating to her real and personal estate, and such deeds, books, and documents were taken possession of on the part of His Majesty; and the same are now under the control of His Majesty's said Attorney-General; and the plaintiff submits that the same ought to be produced and handed over

to such person or persons as may be appointed to be such receiver or receivers as aforesaid, for the purpose of facilitating the receipt of the rents and profits of the said real and leasehold estate, and the receipt and getting in of the said intestate's other personal estate.

The plaintiff claims:

1. The appointment of some proper person to receive the rents and profits of the real estate of the said *M.E.*, and to let and manage the same, and also to receive the rents and profits of the leasehold estates of the said *M.E.*, and to let and manage the same, and to receive, collect and get in her personal estate: pending the aforesaid litigation in His Majesty's Surrogate Court of the County of

2. The delivery of all deeds, books, and documents now under the control of His Majesty's said Attorney-General, belonging or relating to the real and personal estate of the said *M.E.*, to the person or persons so to be appointed, or a direction that the same may be deposited in this Court: for the purpose of enabling such person or persons to refer to and use the same, as may be necessary.

3. All usual and necessary directions for the purposes aforesaid.

4. Such further and other relief as the nature of the case may require.

[*Formal parts: see No. 123.*]

1. In the year 19 , one *W.P.* became, and from thenceforth until he conveyed the same as hereinafter mentioned continued to be the owner in fee of that certain parcel of land known (*describe it*).

2. The said *W.P.*, while such owner as aforesaid, by indenture dated the 29th day of December, 19 , mortgaged the said premises to *Mary* and *Jessie McM.*, and afterwards, by indenture dated the 19th day of April, 19 , he released to the said *Mary* and *Jessie McM.* his equity of redemption therein.

3. By deed dated the 10th day of November, 19 , the said *Mary* and *Jessie McM.* conveyed the said premises to the plaintiff in fee simple for a valuable consideration then paid to them by the plaintiff.

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Claim to remove from Registry Office an improperly registered plan.

4. Before paying his purchase money and accepting the said conveyance, the plaintiff searched the title of the said premises in the Registry Office of the said County of Simcoe, and as the result of such search ascertained that there was no deed, conveyance, plan or other instrument registered against the said premises which in any way affected or impaired the registered title of the said *Mary and Jessie McM.* to the same, and thereupon the plaintiff paid his purchase money and became and now is the owner in fee of the said premises.

5. The plaintiff caused the conveyance of the said premises to him to be registered in the said Registry Office on the 8th day of January, 19 .

6. The said premises were at the time of the plaintiff's purchase thereof, and still are, uncultivated and in a state of nature, but the plaintiff has ever since paid all taxes assessed upon the same, but the plaintiff is not nor has nor have any person or persons ever been in the actual occupation of the same or any part thereof.

7. The said premises are wholly situate in the Township of Orillia, near to the Village of Orillia, in the said County of Simcoe, and are divided from the said Village by a strip of land running the whole length of the said lot and containing about five acres.

8. By deed poll dated the 6th day of December, 19 , and registered in the said Registry Office on the 15th day of the same month, made by the Sheriff of the said County of Simcoe, the said Sheriff purported to convey to the defendant *J.A.*, certain lands described in the said deed poll as "all that certain parcel or tract of land situate in the Village of Orillia, in the County of Simcoe, containing by admeasurement two acres, be the same more or less, being composed of Village lot No. 9, on the south side of St. Andrew Street, Cameron's survey, in the said Village of Orillia," and the said defendant, *J.A.*, now claims to own the lands in the said deed described.

9. By a certain other deed poll dated the 12th day of December, 19 , and registered in the said Registry Office on the 19th day of the same month, made by the said Sheriff, the said Sheriff also purported to convey to the defendant, *J.S.*, certain lands in the said deed described respectively as lot No. 8 on the south side of St. George Street, in the Village of Orillia, Cameron's survey, and lot No. 1, on the south side of St. George Street in the said Village of Orillia, Cameron's survey, and the said defendant, *J.S.*, now claims to be the owner of the said lands in the said deed described.

10. By two certain other deeds poll dated respectively the 25th day of February, 19 , and registered on the 27th day of March in the same year, and made by the said Sheriff, the said Sheriff also purported to convey to the defendant, *J.S.*, certain lands in the said deeds described respectively as lots 1 and 2 on the north side of George Street, in the Village of Orillia, two acres, Cameron's survey, and the said defendant *J.S.* now claims to be the owner of the said lands in the said two deeds described.

11. One Cameron did in fact make a survey and register a plan of the said Village of Orillia, but he never made a survey or registered a plan of the said premises so conveyed to the plaintiff as aforesaid, and no plan relating to or affecting the said premises or any part thereof was ever registered until the registration of the pretended copy of a plan by the defendant, *J.A.*, as hereinafter mentioned.

12. On the 29th day of July, 19 , the defendant, *J.A.*, without making any survey, adopted a plan or sketch of the plaintiff's said lot, made in the year 19 , and caused to be registered in the said Registry Office what purports to be a copy of the said plan, whereby the plaintiff's said lot is represented as forming part of the Village of Orillia, and whereby his said lot appears to be sub-divided into 50 different lots, with six different streets intersecting the same, as by the said pretended copy of plan will, when produced, more fully appear.

13. The said six streets depicted on the said pretended copy of plan are named respectively St. David Street, St. Andrew Street, St. Patrick Street and St. George Street, and the said lots or sub-divisions are numbered on the said pretended copy of plan with reference to the said streets. The said pretended copy of plan is not in fact a true copy of the plan or sketch which was actually made in the year 19 ; on the contrary, in the original plan made in the year 19 , the streets shewn thereon were not designated by any name whatever, but in the said pretended copy the said defendant, *J.A.*, or some one acting in his behalf, has arbitrarily assigned names to the different streets shewn on the said plan without knowing or having any means of knowing by what names the said streets were respectively intended to be designated by those by or for whom the said original plan or sketch was prepared.

14. There are in fact no streets in the said Village of Orillia called St. David Street, St. Andrew Street, St. Patrick Street, or St. George Street.

15. The effect of the registration of the said pretended copy of a plan has been and is to make the hereinbefore described parcels of land owned or claimed to be owned by the defendants under the respective deeds poll mentioned in the 8th, 9th and 10th paragraphs hereof, appear to form part of the plaintiff's said lot, and the defendants now claim to be entitled under the said deeds poll to various portions of the plaintiff's said lot, according to the said pretended copy plan.

16. No original plan of the plaintiff's said lot corresponding with the said pretended copy so registered by the defendant, *J.A.*, was ever made; but if any such plan ever were made it was not registered in the said Registry Office before or at the dates of the said advances by and conveyances to the said *Mary* and *Jessie McM.*, of the said lot 5, and they had no notice or knowledge of any such plan, and they advanced and paid their money and received the said conveyances to themselves in good faith, and they were in fact innocent purchasers for value of the said lands without notice of the said plan.

17. Before and at the date of the payment by the plaintiff of his purchase money, and the conveyance of the said lot 5 to him, no plan of the said lot was registered in the said Registry Office, and he paid his said purchase money and received his said conveyances of the said lot 5, without notice or knowledge of the said plan, and he is in fact an innocent purchaser for value of the said lands without notice of the said plan, and the plaintiff claims the benefit of the Registry laws in force in this Province.

18. The plaintiff submits that the said pretended copy of plan could not legally be registered on the strength of the supposed survey of 19 , and that it forms a cloud on the plaintiff's title to the said lot 5, and that the said registration ought to be declared illegal and void and ought to be cancelled.

19. The plaintiff further submits that while the registration of the said pretended copy of plan remains uncanceled the said deeds poll form a cloud upon the title of the plaintiff to the said lot; and if for any reason this Court should see fit to permit the said registration to remain uncanceled, then the plaintiff says that at and before the time when the said *Mary* and *Jessie McM.* advanced their moneys and received the said conveyances of the said lot 5, they had no notice or knowledge of the said deeds poll, or of any or either of them, and they became and were purchasers of the said lot for value in good faith and without notice of the said deeds poll, or any or either of them; and that at and before the time when the

plaintiff paid his purchase money and received his said conveyance of the said lot No. 5, he had no notice or knowledge of the said deeds poll or of any or either of them, and he was and is a purchaser for value without notice thereof, and he claims the benefit of the Registry laws in force in this Province, and the plaintiff submits that the said deeds poll should, in the event of the said registration of the said pretended copy of plan remaining uncanceled, be delivered up to be cancelled, or that the defendants should be ordered to execute such instruments as shall remove the cloud on the plaintiff's said title created by their registration.

20. The plaintiff did not intend that the said lot 5 should be sub-divided or laid out in lots and streets, and such subdivision is altogether contrary to his intention and wish.

22. The plaintiff and the defendants are the only persons who appear by the books in the said Registry Office to be affected by the registration of the said pretended copy of plan.

23. The said defendants are not, nor is, nor are any or either of them in the actual possession of the parcels of the said lot No. 5, respectively claimed by them or of any part thereof.

The plaintiff claims:

1. A declaration that the said pretended copy of plan and the registration thereof, are illegal and void as against the plaintiff and a direction that the registration of the said pretended copy of plan be cancelled.

2. Or if for any reason this Honourable Court should see fit to permit the said registration to remain uncanceled, then a declaration that the same is inoperative and of no force or effect as against the plaintiff's right to the said lot, and that the said deeds poll are void as against the plaintiff's said title and that the registrations thereof form a cloud upon the plaintiff's said title, and a direction that the defendants do deliver up the said deeds poll to be cancelled, or do execute such instruments as shall remove the said cloud.

3. The costs of this action.

4. Such further and other relief as may seem just.

SECTION XLIX.—RELEASE.

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The defendants submit that the said release so executed as aforesaid, and the payment of the said sum of \$, and the receipt given for the same, is a full discharge.

SECTION L.—REFLEVIN.

326

Statement of
claim in re-
plevin.

(*Formal parts: see No. 123.*)

1. On or about the day of , 19 , the defendants wrongfully and unlawfully caused a distress to be levied upon the plaintiff's goods and chattels in or upon the house and premises known as No. , and situate in , in the County of , in respect of certain rent which the defendants falsely alleged to be due from the plaintiff in respect of said house and premises.

2. Under cover of such distress the defendants wrongfully took the plaintiff's said goods and chattels, that is to say (*describing them*), and unjustly detained the same until the plaintiff replevied them and gave and found security to commence and prosecute this action for the return of the goods and chattels, if a return of them shall be awarded.

3. By reason of the premises the plaintiff has suffered damage (*any special damage may be mentioned*).

The plaintiff claims \$ and the costs of this action.

SECTION LI.—SALE OF GOODS.

(*Formal parts: see No. 123.*)

327

Claim for
goods sold and
delivered.

3. On the day of , A.D. 19 , the defendant [*if so by letter or by order in writing*] ordered of the plaintiff (*description of goods according to the fact and stating price and terms of payment*).

4. The plaintiff accepted the said order and in accordance therewith supplied the defendant with (*as the case may be*).

5. The defendant has not paid the sum of \$ the price of the said so delivered by the plaintiff and accepted by the defendant [but only \$ portion thereof] and the sum of \$ [or the sum of \$ the balance of the said \$ is due and payable in respect thereof].

The plaintiff claims \$ and the costs of this action.

Or where acceptance of part of the goods is refused.

The same
where accept-
ance of part of
the goods sold
is refused.

3. The defendant accepted (*as the case may be*) being part of the said so sold, but wrongfully refused to accept the remainder of said .

4. The plaintiff was always ready and willing to supply the remaining of said so ordered by the defendant, but the defendant has always refused to accept the same [*if so add* and has wrongfully repudiated his contract in regard to them].

5. Owing to the refusal of the defendant to accept said the plaintiff lost the sale thereof and was unable to sell them [*or after the refusal of the defendant to accept said the plaintiff resold the same but was only able to obtain \$ therefor, and thereby lost the sum of \$, on such resale or as the case may be, shewing the damage accrued to the plaintiff*].

The plaintiff claims \$ and the costs of this action.

(*Formal parts: see No. 123.*)

328

1. On the day of , A.D. , the plaintiff through his travelling agent agreed to sell to the defendant and the defendant agreed to buy from the plaintiff (*goods, setting out the particulars*) the same to be delivered to defendant by (*date*) and to be equal to the samples then shewn to the defendant, for the price of sum of \$ payable [*upon delivery or as the case may be*].

Claim for
goods sold by
sample.

2. The plaintiff delivered the said by the said date, viz., on the and the same were equal to the samples.

Delivery.

3. The defendant has not paid the price thereof or any portion thereof.

[*Or, The defendant refused to accept the said to pay the price therefor or any portion thereof.*]

and Refusal to ac-
cept.

4. [*See 5 of preceding form.*]

The plaintiff claims \$ and his costs of action.

(*Formal parts: see No. 125.*)

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1. The said [*goods*] were inferior in quality to the samples shewn to the defendant by the plaintiff's agent, and the defendant therefore refused to accept or pay for the same.

Defence to
foregoing
claim.

Inferior to
sample.

[Or, 1. The said [goods] were inferior in quality to the sample shewn to the defendant by the plaintiff's agent, and were worth \$200 less than if they had been of the same quality as the sample.

2. The defendant has paid the plaintiff the sum of \$ which is the full amount payable by the defendant under the said contract after deducting the said sum of \$200].

330

Defence of
warranty of
quality.

(Formal parts: see No. 125.)

1. The plaintiff at the time of the sale of the said [goods] to the defendant warranted them to be (*according to the fact*) and the said were not of the description or quality warranted but were of an inferior description and quality. They were (*giving particulars*) and were worth \$ less than if they had been as warranted.

2. See 2 of preceding form.

331

The same with
counterclaim
for damages
for the breach
of warranty.

(Formal parts: see No. 125.)

At the time of the said sale and warranty the plaintiff well knew that the defendant had required the said goods and was purchasing the same in order to fulfil a contract, previously thereto entered into by the defendant with one *E.F.* for the sale at a higher price to the said *E.F.* of goods of the same quality and description as those agreed to be sold by the plaintiff to the defendant, and the defendant after receiving the said goods from the plaintiff delivered them to the said *E.F.* as and for the goods which the defendant had contracted to supply to him, and the said [goods] not being of the said description and quality the said *E.F.* rejected the same and the defendant thereby lost the profits which he would otherwise have derived from the sale to the said *E.F.*, viz., the sum of \$ and incurred (*setting out any other damages*).

The defendant claims \$ damages, and his costs of his counterclaim.

332

Claim for failure to deliver
goods.

(Formal parts: see No. 123.)

1. On the day of , A.D. 19 , the defendant [by letter or agreement in writing] agreed to sell and deliver to the plaintiff (*particulars of goods*) at the price of \$ and the plaintiff agreed to accept and pay for the same.

2. The plaintiff has always been ready and willing to accept and pay for the same and the time for delivery of the same pursuant to the said agreement has elapsed [*or a reasonable time for the delivery of the same has elapsed*], but the defendant has not delivered the said [goods] or any of them.

3. By reason of the failure of the defendant to deliver the said the plaintiff has been obliged to purchase (*goods*) of the like kind, quantity and quality at the price of \$ whereby the plaintiff has been put to a loss of \$ and (*specifying any other damages*).

The plaintiff claims \$ damages, and his costs.

(*Formal parts: see No. 123.*)

1. The plaintiff is a labourer residing, &c.
2. The defendant is an agricultural implement manufacturer, carrying on business in, &c.

3. On or about A.D. 19 , the plaintiff agreed to buy from the defendant, through one his (the defendant's) agent at , and the defendant contracted and agreed, through and by his said agent, to and with the plaintiff, to sell, furnish, and deliver to him, the plaintiff, for the price or sum of \$ payable as hereinafter mentioned, a steam threshing engine and machine, of his (the defendant's) own manufacture, which said engine and machine would do good work, and would not throw fire or emit sparks of fire that would endanger buildings or other inflammable materials that might happen to be adjacent or in proximity to the said engine and machine while in operation.

4. On or about the A.D. 19 , the plaintiff, in payment of the said engine and machine, and in compliance with the said contract between the plaintiff and defendant, gave to the defendant's said agent, and he accepted in payment, as aforesaid, three of the plaintiff's promissory notes, each for the sum of \$, due respectively on in each of the years , with interest thereon at 7 per centum per annum.

5. On or about the 14th day of the said month of July the plaintiff received from the defendant, at the station of the railway, at , a steam threshing engine and machine, which, the defendant alleged, was delivered in fulfilment of the said contract, and on which the plaintiff paid for freight the sum of \$19.20.

333

Claim by purchaser for breach of a contract to supply a machine fit for a special purpose.

6. Since the delivery of the said engine and machine as aforesaid, the plaintiff used and had the said engine and machine in operation in the threshing business, and found that it did not do good work, and did throw fire and emit sparks of fire, whereby adjoining buildings and other adjacent inflammable materials were endangered, contrary to and in breach of said contract between the plaintiff and the defendant; whereupon and at different times since, the plaintiff made complaints of the said defects in the said engine and machine to the defendant and to his said agent, and offered to return to the defendant, and requested and demanded him, by letter and through his said agent, to receive and take back the said engine and machine, and return the said notes and freight money; but he, the defendant, and his said agent repeatedly refused and have ever since refused to take the said engine and machine back and return the said notes and freight money, notwithstanding frequent requests and demands made by and on the part of the plaintiff so to do.

7. In consequence of the said defects in the said engine and machine many persons, fearing destruction of their property and buildings by fire, through the employment of the said engine and machine, and also knowing of the inferior work done by the said engine and machine, have refused to employ the same to do their threshing, whereby the plaintiff has suffered severe losses through failing to obtain such work.

8. On several occasions, owing to the said defect in the said engine and machine of throwing fire or emitting sparks of fire, adjacent buildings and other inflammable materials took fire from the said engine and machine and were totally or partially destroyed, whereby the plaintiff was compelled to pay the owners of such property who had employed him to thresh, considerable sums of money in compensation for such destruction of property.

The plaintiff claims:

1. Damages to the amount of \$.
2. The return of the said three promissory notes or their value.
3. \$19.20 for a return of freight paid by the plaintiff on said engine and machine.
4. Such further or other relief as the nature of the case may require.

(*Formal parts: see No. 125.*)

334

1. For the purposes of this action the above named defendant, admits the allegations contained in the first and second paragraphs of the plaintiff's statement of claim. Defence and counterclaim to foregoing claim.

2. On or about the day of 19 , the plaintiff agreed in writing to purchase from the said defendant the steam threshing machine and engine in the statement of claim mentioned, to be delivered to the plaintiff about the , 1900, at and for the price or sum of \$, to be paid by notes as follows: one-third on ; one-third on ; and one-third on ; each payment with interest at 7 per cent. per annum.

3. The said defendant duly delivered the said engine and machine, according to the said agreement; and the plaintiff in payment of the said engine and machine, gave to the said defendant, his promissory notes, each for the sum of \$, as mentioned in the fourth paragraph of the statement of claim, payable, with interest, as in the said paragraph mentioned.

4. The plaintiff kept and used the said engine and machine for a long time and made no complaint in regard to the same, but, on the contrary, expressed himself to the defendant, , as perfectly satisfied with the same; and the said defendant, , denies that the said engine and machine were not capable of doing good work, and of being used without throwing fire and emitting sparks of fire, so as to endanger adjacent buildings or inflammable materials, provided the said engine was kept in proper order; and the said defendant says that if the said engine and machine, while being used by the plaintiff, have not done good work and have thrown fire and emitted sparks of fire so as to endanger adjacent buildings or inflammable materials, it has been owing to the negligence on the part of the plaintiff, and to his not employing proper skill and care in keeping the said engine in proper order.

Counterclaim.

5. By the said agreement it was provided that the property in the said engine and machine was not to pass to the plaintiff until full payment of the price and of any obligations given therefor, or for any part thereof; and that if any default in payment was made, the said defendant might Counterclaim.

resume possession and sell the said engine and machine, to pay the unpaid balance of the price, whether due or not.

6. One of the notes before mentioned, given by the plaintiff to the defendant, viz., that payable on the , 19 , is now overdue and unpaid; and the said defendant, by way of counterclaim, claims to have the said engine and machine sold to pay the unpaid balance of the price thereof, and to have the same delivered up to him for such purpose, or sold under the direction of this Court; and the said defendant also, by way of counterclaim, claims to have judgment against the plaintiff for payment of the amount thereof, and the interest, at 7 per cent. per annum, secured thereby; and his costs of this action and counterclaim.

(Formal parts: see No. 123.)

335

Another form
of statement
of claim for
breach of
warranty.

3. On day of , A.D. 19 , the defendant by agreement in writing agreed to sell to the plaintiff and the plaintiff agreed to buy from the defendant tons of which the defendant warranted to be in a merchantable condition and reasonably fit for [*state the particular purpose, or for the purposes for which is commonly used*] at the price of \$ per ton [*or in the case of goods purchased by sample warranted to be equal in quality and description to a sample then produced for the inspection of the plaintiff and alleged by the plaintiff to be a fair sample of the said .*]

4. The defendant accordingly delivered the said tons of [for the purpose aforesaid] and the plaintiff received the same, and paid for the same the price so agreed to be paid.

5. The plaintiff trusting to the said warranty of the defendant used a large quantity of the said in his business of, [being one of the purposes for which is commonly used] but afterwards the plaintiff discovered that the said was not in merchantable condition or reasonably fit for [*the particular purpose, or the purposes for which is commonly used. Or in the case of goods sold by sample, after the delivery of the said the plaintiff discovered upon using a portion thereof in his business of that the said was not equal in quality or description to the said sample but greatly inferior thereto.*]

6. In consequence of the said being so unfit for (*the purpose for which it was used*) the same completely spoilt the (*goods to which it was applied*) and the plaintiff has

incurred great loss and expense in replacing the said goods so spoilt as aforesaid, and has been injured in his name and reputation as a manufacturer of and has incurred other damage (*which may be stated if it can be done without proximity*).

7. The plaintiff has still in his possession some of the said so delivered, and paid for, but by reason of its defective quality the same is wholly useless and the plaintiff has lost the amount paid therefor.

The plaintiff claims \$ damages, and his costs of this action.

(*Formal parts: see No. 125.*)

The defendant says that if the said was useless for the purpose for which the plaintiff wanted the same, or if the plaintiff's (*goods*) were spoilt by the use thereof (which the defendant does not admit but denies) it was not through any defect or default in the said or in its manufacture, but arose solely through the careless and unskilful use of the same by the plaintiff.

336
Defence to
foregoing
claim.

SECTION LII.—SEDUCTION.

(*Formal parts: see No. 123.*)

1. The plaintiff is (a farmer) residing in the Village of in the County of

337
Claim for
seduction.

2. The defendant is residing in the same village

3 *A.B.*, a young unmarried woman, is the plaintiff's daughter. [*Or, where the plaintiff is not the father or mother of the person seduced (a).* At the time of and since the seduction hereinafter mentioned one *A.B.*, a young unmarried woman, and a relation of the plaintiff's wife was residing with the plaintiff and rendered services to the plaintiff by assisting him in the management of his farm and dairy, and in the work of his household.]

(a) As to when an action may be maintained by a person other than the father or mother, see R. S. O. 1897 c. 69 and 62 Vict. (2) c. 13.

4. In or about the month of _____, 19____, the defendant seduced and carnally knew the said *A.B.*, whereby she became pregnant and was delivered of a child on the _____ day of _____, 19____.

5. (*Where the action is not by the father or mother.*) In consequence of such seduction the plaintiff lost the services of the said *A.B.* for a long time and incurred expense in nursing and taking care of her and about the delivery of the said child.

SECTION LIII.—SHARES.

(*Formal parts: see No. 123.*)

338

Claim in
action for calls
on shares.

1. The plaintiff's company is a company [incorporated under and] subject to the provisions of "The Ontario Companies Act."

2. The defendant is a _____ and is the holder of _____ shares in the capital stock of the plaintiff company.

3. The defendant is indebted to the plaintiffs in the sum of \$ _____ in respect of a call of _____ per cent. of the said shares payable on the _____ day of _____, A.D. 19____, and in the sum of \$ _____ in respect of a further call of _____ per cent. of the said shares payable on the _____ day of _____, A.D. 19____, and in the sum of \$ _____ for interest on the said calls respectively, whereby an action has accrued to the plaintiffs.

The plaintiffs claim \$ _____ and the costs of this action.

(*Formal parts: see No. 123.*)

339

Claim for the
price of shares.

1. The plaintiff is _____.

2. The defendant is _____.

3. On the _____ day of _____, A.D. 19____, the plaintiff sold to the defendant _____ shares in the capital stock of (*name of the company as the case may be*) at the price of \$ _____ per share to be paid to the plaintiff [upon the transfer of the said shares to the defendant *or as the case may be*].

4. The said shares were on the _____ day of _____, A.D. 19____, duly transferred to the defendant [*if so* and the same were accepted by the defendant].

5. The defendant has not paid the said sum of \$ the price of said shares or any part thereof.

The plaintiff claims \$ and his costs of action.

(*Formal parts: see No. 123.*)

1-3. *As in preceding form.*

4. The plaintiff within due time in that behalf, viz., on the day of , A.D. 19 , duly transferred the said shares to the defendant and notified the defendant of such transfer, and required the defendant to accept the same and pay the price thereof.

340

Claim for price of shares and damages for non-acceptance of the shares.

5. The defendant has not paid the price of the said shares, and neglected to accept the said shares [and has not accepted the same] whereby according to the by-laws, rules, and regulations of the said company, the plaintiff remained the legal owner of the said shares, and as such legal owner became liable to pay and paid calls on the said shares made subsequently to the sale of said shares to the defendant as aforesaid.

6. After the said sale of the said shares the price of said shares fell in the market and by reason of the defendant's failure to accept the said shares the plaintiff lost the sum of \$ on the sale of the same to another person on the day of , A.D. 19 .

The plaintiff claims \$ for damages and also his costs of action.

SECTION LIV.—SHERIFF.

(*Formal parts: see No. 123.*)

1. The plaintiff is, &c.
2. The defendant is and at the time of the matters complained of herein was the Sheriff of the County of .

341

Claim against sheriff for not levying under a *fi fa*.

3. On or about the day of the plaintiff caused a writ of fieri facias directed to the defendant upon a judgment recovered by the plaintiff in the High Court of Justice on the day of against A.B. to be issued out of the said Court commanding the defendant (*as in the writ*).

4. On the day of the plaintiff caused the said writ to be delivered to the defendant indorsed with a direction to levy \$, and \$ for interest together with the costs of the said writ and sheriff's fees, poundage and expenses.

5. At the time of the delivery of the said writ to the defendant and during a reasonable time afterwards goods and chattels of the said *A.B.*, exigible under the said *fi. fa.* were within the bailiwick of the defendant of which the defendant then had notice and could and should have levied the said money pursuant to the said writ, but the defendant did not levy the same [or any part thereof].

6. By reason whereof the plaintiff has been unable to obtain the said moneys and the same remain wholly unpaid.

The plaintiffs claims:

1. Payment of the said sum of \$, and his costs of this action.

Claim for a
false return.

5a. The defendant further falsely returned to the said Court upon the said writ that the said *A.B.* had not any goods or chattels in his bailiwick whereof he could cause to be made the said moneys or any part thereof.

The plaintiff claims \$ damages, and his costs of action.

(*Formal parts: see No. 123.*)

342

Claim against
sheriff for
trespass.

1. The plaintiff is .

2. The defendant is and at the time of the matters complained of was the Sheriff of the County of .

3. On or about the day of the defendant by his agents, officers or servants broke into and entered the plaintiff's shop at took possession of all the plaintiff's goods and chattels therein, carried away \$ in cash therefrom, and remained for several days in possession of the said goods and chattels in the said shop, and obstructed and interfered with the plaintiff in carrying on his business aforesaid in his said shop.

4. The defendants and his said agents, officers or servants committed the acts aforesaid in pretended execution of a writ of *feri facias* directed to the defendant as sheriff afore-

said commanding him to cause to be made the sum of \$ of the goods and chattels of one *A.B.*

5. The plaintiff notified the defendant in writing on the day of that the said goods and chattels were the plaintiff's property, and not that of the said *A.B.*, but the defendant nevertheless insisted on retaining possession of the same.

5. The plaintiff has by reason of the premises been injured in his credit and reputation and in his business as .

The plaintiff claims \$ damages, and his costs of action.

(See No. 341.)

343

Claim against
sheriff for a
false return of
Nulla Bona

SECTION LV.—SOLICITOR.

(Formal parts: see No. 123.)

1. The plaintiff is, &c.

2. The defendant is a Solicitor of the Supreme Court of Judicature for Ontario carrying on business at .

3. In or about the month of A.D. 1900, the plaintiff retained and instructed the defendant to conduct an action in the High Court at the suit of the plaintiff against *A.B.* for the recovery of the sum of \$ owing by the said *A.B.* to the plaintiff [upon a promissory note payable on the day of A.D., 1895,] for the remuneration usually payable to a solicitor in such case and the defendant accepted the said retainer.

[4. The plaintiff pointed out to the defendant the need of taking proceeding by action before the plaintiff's right of action should become barred by the Statute of Limitations, but the defendant neglected to commence and delayed commencing such action until the plaintiff's said right of action had become barred by the said Statute of Limitations and when subsequently thereto the defendant commenced such action in the High Court of Justice against the said *A.B.*, the said *A.B.* by way of defence pleaded the said statute as a bar to the plaintiff's claim in the said action, and judgment was given therein on such defence in favour of the said *A.B.* and against the plaintiff.

344

Claim against
solicitor for
negligence.

5. The plaintiff therefore lost the said sum of \$ and costs incurred by him in prosecuting the said action, and became obliged to pay to the said *A.B.* as the costs of defending the said action the sum of \$ and incurred other expense and damage.]

[4. *Or*, the defendant did not conduct the said action with due care, skill and diligence, but on the contrary (*mention the particular acts of negligence complained of.*)]

The plaintiff claims \$ damage and his costs of action.

For a compromise without authority.

[5. The defendant, purporting to act on behalf of the plaintiff, but without the authority or consent of the plaintiff, agreed to a compromise of the said action whereby (*state result of compromise*), and by reason thereof the plaintiff suffered great loss and damage (*state how.*)]

(*For defence to this claim, see No. 351.*)

(*Formal parts: see No. 123.*)

345

Claim by solicitor on a bill of costs.

1. *See preceding form.*

2. *See preceding form.*

3. The plaintiff was in or about the month of *A.D.* 19 , retained and employed by the defendant as his solicitor in respect of certain business of the defendant.

4. Pursuant to such retainer the plaintiff as such solicitor performed certain work and made certain journeys and expended certain moneys in and about the said matters.

5. More than one month before the commencement of this action the plaintiff duly rendered to the defendant a bill of the fair and reasonable charges and disbursements of the plaintiff relating to the said matters, subscribed with the proper hand of the plaintiff [*or enclosed in or accompanied by a letter to the defendant subscribed with the proper hand of the plaintiff referring to such bill*].

6. Certain payments were made by the defendant to the plaintiff during the period of the said employment of the plaintiff as such solicitor, on account of the plaintiff's fees, charges and disbursements, for which due credit has been given to the defendant in an account rendered to the defendant by the plaintiff with the said bill of costs.

7. In respect of the matters aforesaid there is now due to the plaintiff the sum of \$ _____, which the plaintiff has requested the defendant to pay but the defendant has refused and neglected to do so.

The plaintiff claims \$ _____ and his costs of action.

(Formal parts: see No. 125.)

346

The defendant says that the plaintiff did not one month before the commencement of this action deliver to the defendant, or send by post to, or leave for him at his counting house, office of business, dwelling house, or last known place of abode, a bill of the plaintiff's charges and disbursements now sued for, subscribed with the proper hand of the plaintiff, or enclosed in, or accompanied by a letter subscribed in like manner referring to such bill as required by chapter 174 of the Revised Statutes of Ontario, section 34.

Defences—

Non-delivery of bill one month before action.

347

The defendant says that the fees, charges and disbursements of the plaintiff in the bill in the statement of claim mentioned are not fair and reasonable, but are greatly in excess of the proper charges for the plaintiff's services and disbursements.

Amount of charges not reasonable.

348

(Payment into Court may be pleaded, or an offer to pay any sum less than the amount sued for.)

Payment into court. (a)

349

(A counterclaim for negligence may be framed from the statement of claim No. 344.)

Negligence.

350

The plaintiff is not a solicitor duly qualified so to act with in the meaning of the Act respecting Solicitors, being chapter 174 of *The Revised Statutes of Ontario*.

Plaintiff not a solicitor.

(a) See Nos. 201 and 316.

(*Formal parts: see No. 125.*)

351

Defence to claim against solicitor for compromising client's case without authority. (a)

1. The defendant does not admit any of the allegations contained in the plaintiff's statement of claim and puts the plaintiff to the proof thereof.

2. The defendant is not guilty as alleged.

3. The defendant says that at the time when he as solicitor for the plaintiff in the action of the plaintiff against the Corporation of the City of Toronto compromised and settled the same, this defendant was not then bound or under any orders or directions whatsoever from the plaintiff not to compromise the said action. He was then as such solicitor and under and by virtue of his retainer by the plaintiff, at full and perfect liberty to conduct the said action in such a manner as to him, the said defendant, as such solicitor should in the exercise of due and reasonable skill and care in that behalf appear to be most advantageous to the interest of the said plaintiff with reference thereto.

4. The defendant acted in good faith towards the plaintiff and in compromising and settling the plaintiff's said action exercised due and reasonable skill and care in that behalf, and at the time the defendant compromised the action it appeared to this defendant that by so doing and by so procuring such settlement this defendant was acting, as in fact he was, in the manner most advantageous and beneficial to the interest of the plaintiff with reference to the said action.

5. The plaintiff has suffered no damage as alleged.

SECTION LVI.—SPECIFIC PERFORMANCE.

(*Formal parts: see No. 123.*)

352

Claim for specific performance of agreement for sale or purchase of property.

1. By an agreement in writing dated the _____ day of _____, and signed by the defendant *C.D.*, the said defendant contracted to buy of [*or sell to*] the plaintiff certain freehold [*or leasehold*] property therein described or referred to (*describe it shortly*) for the sum of _____.

2. The plaintiff is ready to perform the agreement on his part, and has made application to the said *C.D.* to perform the said agreement on his part, but he has not done so.

(a) A litigant may promptly repudiate and set aside a settlement made contrary to instructions; see *Neale v. Gordon-Lennox*, (1902) A. C. 465.

The plaintiff claims:

1. The specific performance of the said agreement.
2. All proper directions for that purpose.
3. Such further or other relief as the nature of the case may require, and, &c.

(*Formal parts: see No. 123.*)

353

1. The defendant *C.D.* being or pretending to be seised in fee simple in possession of lot No. , in, &c., the plaintiff and the said *C.D.* on or about the day of , entered into a verbal agreement for the purchase by the plaintiff of the said lot of land at or for the price or sum of payable, &c., with interest, and upon payment thereof a proper conveyance was to be executed of the said premises free from incumbrances.

Claim for specific performance of parol agreement partly performed.

2. The plaintiff was accordingly admitted and entered into possession of the said lot, and has continued in possession thereof ever since and is still in possession thereof.

3. The plaintiff has made divers and considerable improvements thereon and has paid the sum of part of the said purchase money.

4. The plaintiff submits that under the circumstances aforesaid the said agreement has been partly performed so as to entitle the plaintiff to the specific execution thereof.

5. The plaintiff made frequent applications to the said *C.D.* for the purpose of obtaining the specific execution of the said agreement but without effect.

6. The plaintiff is ready on his part to perform the said agreement.

The plaintiff claims:

1. The specific performance of the said contract by the said *C.D.*
2. *As in the preceding Form.*
3. *As in the preceding Form.*

(*Formal parts: see No. 123.*)

354

Claim by executors of mortgagee, for specific performance of agreement to take a transfer; or for foreclosure or sale.

1. On the 7th day of _____, 19____, *G.C.*, late of *R.*, deceased, lent and advanced to the defendant *E.V.* the sum of \$3,000 on the security hereinafter stated.

2. For securing the said sum of \$3,000 and interest the defendant *E.V.* signed and delivered to the said *G.C.* an agreement: [*State shortly the material part of the agreement, e.g., by which, after reciting the deposit of a lease, a policy of assurance, and gas shares, with G.C., E.V. declared that they were deposited as a security for \$3,000, and interest at 5 per cent.; and E.V. charged the leasehold property, the policy, and gas shares, and also a certain rent charge (specifying the lands out of which the same is payable) to which he was entitled in reversion, with the payment of the money and interest; and E.V. agreed, when required, to execute a mortgage and transfer of the said premises, shares, policy of assurance and rent charge: with power of sale, and such other clauses as G.C. should require.*] The defendant *E.V.* at the same time deposited with the said *G.C.* the several documents mentioned in the said agreement.

3. The said *G.C.* died in the month of April, 19____, having first duly made and published his last will and testament in writing, and thereby appointed the plaintiffs executors, who, after his decease, proved the same in the Surrogate Court of the County of _____, and letters probate thereof were duly issued by the said Court to the plaintiff.

4. The said sum of \$3,000 is still due and owing on the said security with interest thereon.

5. The defendant *T.E.*, by letters signed by him, agreed with the plaintiffs, that if they would postpone giving notice of the said agreement to the tenants of the said property, and to the said gas and insurance offices, he would take a transfer of the said security. The plaintiffs accordingly, relying on such agreement, forbore to give such notice; but the defendant *T.E.* now refuses to perform his said agreement. The defendant *T.E.* acted in the said matter in concert with the defendant *E.V.*, for the purpose of delaying the plaintiffs' proceedings against him, and enabling him to dispose of portions of his property; and the defendant *E.V.* has accordingly realized portions of his property, and placed the same out of the hands of his creditors.

6. The plaintiffs are willing and hereby offer on payment of the amount due to them to transfer to the defendant *T.E.* the said security.

The plaintiffs claim:

1. An account of the amount due and owing on the said security.

2. The specific performance of the said agreement with the defendant *T.E.*

3. Payment by the defendant *T.E.* to the plaintiffs of the amount due on their said security with the costs of this action.

4. That the amount so due, together with the costs of this action, may be paid to the plaintiffs by the defendant *E.V.*, by a short day to be appointed for that purpose; and that in default of such payment the defendant *E.V.*, and all persons claiming under him, may be foreclosed of all right and equity of redemption in the said mortgaged premises; and may be ordered to convey and transfer the same to the plaintiffs.

5. A receiver to collect, receive, and get in the rents and profits of the said leasehold premises and the dividends of the said shares, and the said rent charge; when the same shall become payable.

6. Such further and other relief as the nature of the case may require.

(*Formal parts: see No. 123.*)

1. The plaintiff is a yeoman and resides in the Township of St. Vincent, in the County of Grey, Province of Ontario.

2. By an agreement dated the 14th day of January, A.D. 19 , the above-named defendant agreed with the plaintiff to sell to the plaintiff certain freehold property therein described as all and singular (*describe the land*), for the price or sum of \$2,850, payable in the manner and on the days and times following: the sum of \$1,200 to be paid on the 1st day of March, A.D. 19 , the sum of \$1,260 to be paid on a mortgage on said lands held by one *W.H.P.*, and to be paid in accordance with the conditions of said mortgage, and the remaining sum of \$390 to be paid in three equal annual instalments of \$130, with interest on the same at the rate of six per cent. per annum, as mentioned in the said agreement, as will thereby more fully appear and to which, when produced, the plaintiff craves leave to refer.

355

Claim to enforce specific performance of an agreement to convey land.

3. By the said agreement the defendant agreed to give the plaintiff a good and sufficient deed of the said land in fee simple with usual covenants for title, and freed and discharged of all dower and incumbrances.

4. On the 28th day of January, A.D. 19 , the plaintiff, in consideration of the said agreement, and relying upon the same, and upon the defendant's fulfilling his part thereof, paid to the said defendant the sum of \$200 on account of the said purchase money of the said land.

5. On the 1st day of March, A.D. 19 , the plaintiff tendered to the defendant the sum of \$1,000, being the balance of the said cash payment of \$1,200, and requested the defendant to fulfil his part of the said agreement, the plaintiff offering to do all things necessary on his part to carry out the said agreement, but the defendant refused to accept the said sum of \$1,000 and refused to carry out the said agreement, or to convey the said land to the plaintiff.

6. By the said agreement the plaintiff and defendant mutually agreed that if either of them should fail to perform the conditions required of them thereby, the party so failing should forfeit and pay to the other party the sum of \$400.

7. On or about the 11th day of March, A.D. 19 , the plaintiff again tendered to the defendant the sum of \$1,000, and also tendered to the defendant a deed in duplicate, in proper form, for execution, and desired the defendant to perform the said agreement, and execute the said deed or conveyance, but the defendant again refused, and still refuses to execute the said deed, or to carry out his part of the said agreement.

8. The plaintiff hereby offers to do all things necessary on his part to be done in the premises.

The plaintiff claims:

1. Specific performance by the said defendant of the said contract or agreement, or that in default of the said defendant performing same, that the plaintiff may be paid the said sum of \$400, and also the sum of \$200 paid by him as aforesaid with interest.

2. That the said sums of \$400 and \$200 may be declared to be a lien upon the said lands.

3. That the said land may be sold, and the proceeds applied in payment of the said two sums of money.

4. The costs of this action.

5. Such further and other relief as the nature of the case may require.

(Proceed as in No. 352, to end of paragraph 1.)

2. On the 10th day of November, 19 , the plaintiff's solicitor, at the defendant's request, sent to his solicitors, Messrs. A. & B., a perfect abstract of the plaintiff's title to the said lands.

356

Claim for specific performance by vendor charging that vendee has accepted the title.

3. On the 1st day of December, 19 , the said Messrs. A. & B. delivered to the plaintiff's solicitor certain objections to and requisitions upon the said title; and the plaintiff's solicitor, on the 3rd day of December, 19 , delivered to the said Messrs. A. B. a full answer to all such objections and requisitions.

4. No further or other objection to the said abstract or to the title of the said plaintiff has been sent to the plaintiff or his solicitor by the defendant or his solicitors, and the defendant has never returned the said abstract and still retains possession thereof.

5. On or about the 10th day of December, 19 , the defendant was let into possession of the said premises, and has ever since continued in the possession and in the receipt of the rents and profits of the said premises.

6. The plaintiff submits that the defendant has waived all objection to and has accepted the title of the plaintiff to the said premises.

(Add paragraph 2 in form No. 352 and claim, adding "The costs of this action.")

(Formal parts: see No. 123.)

1. The defendants are a municipal corporation under the statutes in that behalf.

357

Claim for specific performance of contract for sale of stock in Railway Company.

2. On the 5th day of December, 19 , the defendants were lawfully possessed of certain shares in the capital stock of the London and Port Stanley Railway Company, to the amount of \$80,000.

3. The said stock had long been and at the date aforesaid was of very trifling value, and the marketable value thereof was vastly inferior to its nominal amount.

4. The municipal council of the said corporation, being desirous of selling the said stock on the date aforesaid, duly entered into an agreement with the plaintiff for the sale thereof to him at the price of \$5,000, and empowered the

Warden of the said County upon payment of the said price to transfer and assign the same to the plaintiff, and the plaintiff agreed to purchase the same at the price aforesaid.

5. The plaintiff immediately thereafter tendered and offered to pay the said sum of \$5,000, but the defendants through their municipal council refused to accept the said price or to carry out the sale of the said stock to the plaintiff.

6. The said stock is of peculiar value to the plaintiff, and only a limited quantity thereof is upon the market, and the plaintiff cannot otherwise obtain the said amount of stock save from the defendants.

7. The plaintiff has always been ready and willing and hereby offers to carry out the said agreement on his part.

8. The defendants threaten and intend to and will, unless restrained by the order and injunction of this Court, sell and dispose of the said stock or shares to some innocent purchaser for value without notice of the plaintiff's rights, or otherwise negotiate or deal with the said stock or shares to the prejudice of the plaintiff.

The plaintiff claims :

1. Specific performance of the said agreement, the plaintiff hereby submitting to perform the same on his part.

2. An injunction restraining the defendant from selling or disposing of, or attempting to sell or dispose of, or otherwise negotiate or deal with, the said stock or shares.

3. The costs of this action.

4. Such further and other relief as may seem meet.

SECTION LVII.—STOCKBROKER.

(*Formal parts: see No. 123.*)

358

Claim by stockbroker against his principal on stock transactions and for commission.

1. The plaintiff is a stock broker carrying on business at .
2. The defendant, is, &c.
3. On or about the day of , A.D. 19 , the defendant employed the plaintiff as a stock broker to purchase for the defendant according to the usages and custom of the Stock Exchange shares of stock in

the (*Company*), and to advance for and on account of the defendant the money necessary to carry out such purchase.

4. The defendant agreed with the plaintiff that if the said purchase and advance was made by the plaintiff and in consideration therefor, the defendant would pay the plaintiff his usual commission and expenses as a stock broker, and interest upon the said advances, and would secure the plaintiff against loss in respect of the same by keeping up a cash margin upon the money so advanced of not less than 15 per cent. above the value of the said shares as quoted in the ordinary newspaper reports; and further that should the said advance and interest not be duly paid or the margin of security not kept at 15 per cent. above the value quoted in the ordinary newspaper reports the plaintiff might sell or dispose of the said stock without notice to the defendant and might apply the proceeds in repayment of the said advance without prejudice to the ordinary legal remedies.

5. The plaintiff thereupon and on or about the said date purchased the said shares for the defendant as his broker, and advanced the money necessary therefor, and the said shares were duly transferred and delivered to the plaintiff for the defendant.

6. The defendant, although repeatedly requested so to do by the plaintiff, neglected and refused to keep up the said cash margin of 15 per cent. above the value quoted in the ordinary newspaper reports, or to repay the amount of said advance in pursuance of the plaintiff's demand in that behalf, whereupon the plaintiff [*if so add*, at the request and with the assent of the defendant] sold the said shares on or about the day of _____, A.D. 19____, for the best price that could be obtained for the same and realized thereby, after deducting his commission and expenses in and about the purchase and sale of said shares, the sum of \$_____.

7. Upon a true accounting between the plaintiff and the defendant the defendant is indebted to the plaintiff in the sum of \$_____.

8. Full particulars of the accounts between the plaintiff and defendant have been rendered to the defendant, but the defendant though requested by the plaintiff so to do has not paid the said \$_____ or any part thereof.

The plaintiff claims \$_____ and the costs of this action.

359

Defence to
foregoing
claim.

(*Formal parts: see No. 125.*)

1. (*Admissions if any.*)

2. [The defendant says that if the defendant entered into any contract through the plaintiff for the purchase of shares of (which the defendant does not admit, but denies), the same was entered into without the intention that such shares should be acquired by the plaintiff or defendant, but with the intent only to make gain or profit by the rise in price of such shares in the market, and without the delivery of any such shares and without the intention that any such shares should be delivered, and with the intention that the differences only between the market buying and selling prices of such shares should be received or paid; and the plaintiff was to so arrange that the defendant should not have to accept or pay for or sell any shares but only to pay or receive the differences between the buying and selling price of such shares in the event of a fall or rise respectively in the market prices.]

[The defendant therefore submits that any such transactions were (as the plaintiff well knew, though the defendant was ignorant thereof) illegal and contrary to the provisions of the Criminal Code and the statutes in force in this Province respecting gaming and wagering contracts and no action lies on the plaintiff's part in respect of the same against the defendant.]

3. [Without prejudice to the defences raised by the foregoing paragraphs, and in case it should appear that under any agreement not illegal the plaintiff was to carry for the defendant shares in , and that such shares were purchased by the plaintiff], the defendant says that while the plaintiff was carrying such shares, viz., on the day of , A.D. 19 , sales of the said stock were being made in the market at , whereupon the defendant instructed the plaintiff to sell the said shares at once unless he desired on his own account to carry the same longer. The plaintiff might have effected a sale of such shares on the day of , 19 , but instead of selling the plaintiff chose to defer selling until the day of , when sales were made of the said shares at a loss of \$, as compared with what would have been realized had a sale been made pursuant to the defendant's instructions aforesaid.

(Formal parts: see No. 123.)

1. See Form 358.

2. See Form 358.

3. On or about [by letter or as may be the case], the defendant agreed as the broker of the plaintiff to purchase for the plaintiff (*shares*), at the then market price of such shares [not exceeding per cent. premium per share, as may be the case] for the usual commission.

4. The defendant on the day of , and for some time thereafter, could have purchased such shares, but the defendant neglected to make such purchase prior to the day of , when such shares had risen above per cent. premium in the market, and the defendant did not and has not purchased for the plaintiff the said shares or any of them.

5. *State damage.*

The plaintiff claims \$ damages and costs of action.

(Formal parts: see No. 123.)

1. See Form 358.

2. See Form 358.

3. On or about the day of , the plaintiff being then the holder of shares in the instructed the defendant as his broker to sell, and the defendant as such broker agreed to sell the same for the plaintiff at the market price, which was then quoted at

4. The defendant at any time before the day of , might have sold the said shares at per share, but neglected to do so, and did not sell the same until the day of , when the market price had fallen and the defendant sold the said shares at per share, whereby (*state damage*).

The plaintiff claims \$ damages and his costs of action.

360

Claim against stockbroker for not purchasing.

361

Claim against stockbroker for neglecting to sell when instructed.

and name of "Pain-Killer," and by that name and trade-mark sold the same in bottles, on which, and on the wrappers of which, the word "Pain-Killer," was conspicuously printed or impressed, and the said medicine was then called "Pain-Killer," and has ever since been and is now known by that name.

2. The said *P.D.* was the original and first inventor of the said medicine, and of the said name of "Pain-Killer," therefor, and was the first person who used the name of "Pain-Killer" as a trade-mark as applied to the said medicine, by which the said medicine should thereafter be known and sold, and no person but the said *P.D.* ever before had used the said name of "Pain-Killer," or applied the same as a name or trade-mark to any medicine or article of commerce.

3. In the year 1843, the said *P.D.* removed to Providence, Rhode Island, where he continued the manufacture of the said medicine and the use of the said trade-mark of "Pain-Killer," as applied thereto in manner aforesaid, and the said medicine acquired great reputation, and large quantities thereof were thereafter continually manufactured and sold by the said *P.D.* in Canada, and in the United States of America, Great Britain and many other parts of the world. The said *P.D.* spent large sums of money in advertising his said medicine and the said trade-mark of "Pain-Killer," as applied thereto, and by these means the same was known to the trade and the general public of Canada, and elsewhere, by the name of "Pain-Killer," and whenever "Pain-Killer" was asked for in shops and elsewhere, the said medicine so invented as aforesaid by the said *P.D.* was intended, and was supplied by that name, and that state of facts has continued from the year 1841 down to and at the present time.

4. In the year 1850 the said *P.D.* sold and transferred to the plaintiff, *E.D.*, one-half share or interest in the said medicine, and in the said trade-mark of "Pain-Killer," and the said *P.D.* and *E.D.* adopted the name, style and firm "*P.D. and Son*," and by that name advertised the said medicine and trade-mark in manner aforesaid, and continued in manner aforesaid, at Providence aforesaid, to manufacture the said medicine, and to sell the same in Canada and elsewhere, and to apply thereto the said trade-mark of "Pain-Killer," and to sell the same by said name in the same way and manner in Canada and elsewhere, as it is hereinbefore stated, that the said *P.D.* had done prior to the said sale and transfer to the said *E.D.*

5. On the 2nd day of May, 1862, the said *P.D.* died intestate, at Providence aforesaid, having at the time of his decease his fixed place of abode and domicile at Providence aforesaid, leaving him surviving his widow *R.D.*, the said *E.D.*, his only son, and the said plaintiff, *S.D.D.*, his only daughter, and no other child or children, or the descendants of any child, and by the laws of the said State of Rhode Island, in that case and under the said state of facts, the property in the said trade-mark and business thereby, under the circumstances stated in this paragraph, became absolutely vested in the said plaintiff, *E.D.*, as surviving partner of the said *P.D.*, and (on the appointment of said *E.D.* as administrator of said *P.D.*, as hereinafter mentioned) as the legal personal representative of the said *P.D.*, and the said plaintiffs and *R.D.* were the sole next of kin of said *P.D.*, and as such entitled to the whole of the property and effects of the said *P.D.*, and being so entitled the plaintiffs purchased from the said *R.D.* all her share and interest in the said estate, business and trade-mark of the said *P.D.*, and the said *R.D.*, by deed poll, dated the 1st day of January, 1863, duly conveyed and assigned to the plaintiffs all her said share and interest in the said estate of the said *P.D.*, and in the said trade-mark, and the said plaintiffs then agreed to, and did become jointly the owners of the said trade-mark, and of the whole of the estate and effects of the said *P.D.*, and the plaintiffs continued the said business of the said firm of *P.D. and Son*, under the same name, and also continued the manufacture and sale of the said medicine and the use of said trade-mark, by the same means and in the same way and manner in every respect as the said *P.D.* and *E.D.* had done, and they still continue the same.

6. On the 10th day of June, 1862, the said *E.D.* was duly appointed administrator of the personal estate and effects of the said *P.D.* by the Municipal Court of the City of Providence, aforesaid, within the jurisdiction of the said Court.

7. The plaintiffs are now the sole and absolute owners of the said business of manufacturers of the said medicine called "Pain-Killer," and sole and absolute owners of the said trade-mark called "Pain-Killer," applied thereto in manner aforesaid, and carry on the said manufacture and use of the said trade-mark in manner aforesaid, at the said factory, in Providence, where the said *P.D.* carried on the same, and the said medicine of the plaintiffs is still called and known, and by them sold throughout the whole of Canada and elsewhere as aforesaid as "Pain-Killer," and the said trade-mark or name of "Pain-Killer," is still applied thereto as a trade-mark in

the way and manner aforesaid, and the same is sold by the said plaintiffs and dealers in said article by the said trade-mark "Pain-Killer," and save in the illegal and fraudulent way and manner in the ninth paragraph hereof set forth, there is no other medicine to which the trade-mark of "Pain-Killer" is applied, and whenever medicine called "Pain-Killer" is asked for, the said medicine of the plaintiffs is the article thereby intended, and the said medicine and trade-mark still preserve their said high reputation and value.

8. On the 22nd day of March, 1880, the plaintiffs caused their said trade-mark of "Pain-Killer," as applied to their said medicine, and the bottles, wrappers and packages containing the same, and used by them in manner aforesaid, to be registered as a trade-mark with the Department of Agriculture in compliance with the Statute of Canada, called "The Trade Mark and Design Act," and have procured the certificate of such registration, in accordance with the terms of the said Act, and for greater certainty as to the contents thereof, crave leave to refer thereto when produced by the plaintiffs, and such registration remains in full force and effect.

9. The defendant was and is well aware of the facts and circumstances hereinbefore stated, but knowing the value of the said medicine, and the value and reputation of the said trade-mark, applied thereto in manner aforesaid, but intending to defraud the plaintiffs, and to violate the provisions of the said Statute, and to enrich himself at the plaintiffs' expense and deceive the public, has fraudulently manufactured, used and put up, and sold in the City of Hamilton, in the Province of Ontario, a certain compound or medicine in colourable imitation of the plaintiffs', and bottled the same, and stamped, affixed, printed and applied to the said bottles and wrappers thereof, the plaintiffs' said trade-mark "Pain-Killer," in imitation of the said trade-mark of the plaintiffs' called "Pain-Killer," in such a way and manner that the public are, by the said fraudulent use of the plaintiff's trade-mark, "Pain-Killer" deceived and led to purchase the article so made by the defendant instead of that so made by the plaintiffs, and at lower prices than that of the plaintiffs', whereby the plaintiffs are greatly injured in their trade, and the public defrauded, and by reason of the premises the value of the said trade-mark is greatly injured, and the defendant is actively engaged in carrying on the said fraudulent use of the plaintiffs' said trade-mark in the way and manner in this paragraph set forth.

10. The plaintiffs are unable to discover when the said defendant first commenced to use their said trade-mark in the manner set forth in the next preceding paragraph, but on learning the said facts in the autumn of the year 19 , the plaintiffs sent their agent, W. L., to warn the defendant to desist from his said conduct, and to cease using the plaintiffs' said trade-mark. The said L. then saw the said defendant at his place of business, in Hamilton aforesaid, and gave him express notice of the registration of the said trade-mark, as set forth in the eighth paragraph hereof, and of all the other facts hereinbefore set forth, and requested him to desist from the further use of the plaintiffs' said trade-mark, but, nevertheless, the said defendant fraudulently continues at his said place of business, in Hamilton aforesaid, and elsewhere, in the Province of Ontario, to use and apply the plaintiffs' said trade-mark to his own medicines in the way and manner hereinbefore mentioned, and thereby to deceive the public, and does in manner aforesaid deceive the public, and defraud the plaintiffs in manner aforesaid, and the defendant by so doing obtains benefits and advantages for himself in fraud of the plaintiffs, and the defendant is now daily selling his said medicine by means of his said fraudulent use of the said trade-mark applied thereto, and the defendant threatens and intends to continue so doing, and will do so unless restrained by the injunction of this Honourable Court.

11. The defendant has a large quantity of his said medicines put up and labelled, and marked in manner aforesaid, with the said trade-mark of the plaintiffs, and has offered the same for sale, and by means of the said fraudulent use of the plaintiffs' said trade-mark, is daily selling the same in fraud of the said rights of the plaintiffs, and to their injury.

The plaintiffs claim:

1. An injunction restraining the defendant, his servants, agents and workmen, from the further use of the plaintiffs' said trade-mark, "Pain-Killer," and from printing, impressing or applying the same to any bottle or package of any kind, containing medicine manufactured, sold or put up by him, his servants, workmen or agents, or applying the same to any wrapper, package, parcel or other thing, or in any other way using or applying the said trade-mark or name of "Pain-killer."

2. That the medicine so put up by the defendant, and fraudulently marked with the trade-mark of the

plaintiffs, as set forth in the eleventh paragraph hereof, may be destroyed.

3. The costs of this action.

4. An account of the profits in anywise directly or indirectly made by the defendant by the use of the said trade-mark of the plaintiffs.

5. Such further relief as the nature and circumstances of the case shall require.

(*Formal parts: see No. 125.*)

1. The defendant denies that *P.D.* in the statement of claim mentioned was the original and first inventor of the word "Pain-killer," nor was he the first person who used the name of "Pain-killer," as applied to a medicine or article of commerce, alleged in the first and second paragraphs of the said statement of claim.

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Defence to the
foregoing
claim.

2. The defendant denies that any of the medicine manufactured by the said *P.D.*, and distinguished or labelled with the said trade-mark of "Pain-killer," was introduced into or known in Canada so early as the year 1841, and neither it nor that manufactured by *P.D. and Son*, or by the plaintiffs, was known to the trade and the general public in Canada and elsewhere by the name of "Pain-killer;" and that whenever "Pain-killer" was asked for in shops and elsewhere was the said medicine so alleged to be invented by the said *P.D.* intended or supplied by that name.

3. The defendant says: that the said trade mark of "Pain-killer" has not been registered duly and properly or in strict accordance or compliance with the Statute of Canada, called "An Act to amend the Act respecting Trade-Marks, and to provide for the Registration of Designs," and the certificate of such registration has not been duly obtained or procured, and is void and of no value or effect.

4. The defendant further says that the words "Pain-killer" have never been used alone to designate the medicine manufactured by the plaintiffs or by the said *P.D.* or *P. D. and Son*; but the said medicine is and always has been designated by the words "P. D.'s Vegetable Pain-killer," nor is the medicine generally known by the name of "Pain-killer" alone; and whenever "Pain-killer" is asked for in shops or elsewhere the medicine manufactured by the plaintiffs is not intended or supplied without further specific directions.

5. The defendant further says: that for many years medicine professing to be remedies for some or all of the diseases to which the plaintiffs direct their medicine to be applied, and put up in bottles of a somewhat similar size and general appearance to the plaintiffs' have been manufactured and sold in Ontario under the name of "Pain-killer" with the addition of the maker's name, and the manufacture and sale of some of these medicines was of a date anterior to the alleged invention and appropriation of the word "Pain-killer" by the said *P.D.*

The defendant claims that this action should be dismissed with costs.

SECTION LX.—TRESPASS.

(*Formal parts: see No. 123.*)

365

Claim for
trespass to
land.

1. The plaintiff was on the 5th March, 19 , and still is the owner and occupier of a farm in the Township of in the County of , being lot No. 4 in the 7th concession of the said Township.

2. A private road, known as Highfield Lane, runs through a portion of the plaintiff's farm. It is bounded upon both sides by fields of the plaintiff's and is separated therefrom by a fence and ditch.

3. For a long time prior to the 5th March, 19 , the defendant had wrongfully claimed to use the said road for his horses, carts and waggons on the alleged ground that the same was a public highway, and the plaintiff had frequently warned him that the same was not a public highway, but the plaintiff's private road, and that the defendant must not so use it.

4. On the 5th March, 19 , the defendant came with a cart and horse, and a large number of servants and workmen, and forcibly used the road, and broke down and removed a gate which the plaintiff had caused to be placed across the same.

5. The defendant and his servants and workmen on the same occasion pulled down and damaged the plaintiff's fence and ditch upon each side of the road, and went upon the plaintiff's field beyond the fence and ditch, and injured the crops there growing, and dug up and injured the soil of the road; and in any case the acts mentioned in this paragraph

were wholly unnecessary for the assertion of the defendant's alleged right to use, or the user of the said road as a highway.

The plaintiff claims:

1. \$ damages for the wrongs complained of, and his costs of action.
2. An injunction restraining the defendant from the repetition of any of the acts complained of.
3. Such further relief as the nature of the case may require.

(*Formal parts: see No. 125.*)

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1. The defendant says that the road was and is a public highway for horses and carriages; and a few days before the 5th of March, 19 , the plaintiff wrongfully erected the gate across the road for the purpose of obstructing and preventing, and it did obstruct and prevent the use of the road as a highway. And the defendant on the said 5th March, 19 , caused the said gate to be removed, in order to enable him lawfully to use the road by his horses, carts and waggons as a highway.

Defence to
foregoing
claim.

2. The defendant denies the allegations of the 5th paragraph of the statement of claim, and says that neither he nor any of his workmen or servants did any act, or used any violence, other than was necessary to enable the plaintiff lawfully to use the highway.

SECTION LXI.—TRUSTEES.

368

The defendants submit in all things to act as this Honourable Court shall direct; and they claim to have the costs, charges, and expenses properly incurred, paid out of the estate of the said testator.

Submission by
trustees to the
direction of
the Court.

SECTION LXII.—VENDOR AND PURCHASER.

(See also "*Specific Performance*," Nos. 352 to 357.)

(Formal parts: see No. 123.)

369

Claim against
a purchaser
for refusing to
complete.

1. and 2. (*Description of parties.*)

3. The plaintiff on the day of by A.B., his agent [and auctioneer] sold [by auction] to the defendant (*describing land*) at the price of \$3,000.

4. The said sale was subject to the following amongst other conditions of sale, namely: that the purchaser should at the time of sale pay to the vendor or his agent ten per cent. of the purchase money and the balance within 3 months thereafter.

5. It was further provided by the said contract of sale that if the purchaser should fail to comply with the conditions of sale or any of them the deposit and all other payments made thereon should be forfeited, and the premises might be resold; and the deficiency, if any, on any such resale together with all charges attending the same or occasioned by the defaulter should be made good by the defaulter.

6. The defendant accepted the plaintiff's title to the said land and paid the said deposit, but did not pay the balance of the purchase money nor complete the said purchase on his part.

7. The plaintiff thereupon in accordance with the conditions of sale in that behalf resold the said lands by public auction on the day of , when the sum of \$2,500 only was realized, and the expenses attending such resale amounted to \$150.

The plaintiff claims.

1. \$500 the deficiency on the resale aforesaid; \$150 the expenses of the resale; and \$ the damages and expenses incurred by the plaintiff in completing on his part, the said sale to defendant, and in endeavouring to procure the completion thereof by the defendant, and his costs of this action.

SECTION LXIII.—WAREHOUSEMAN.

*(Formal parts: see No. 123.)***370**Claim by
warehouse-
man for stor-
age of goods.

1. The plaintiff is a warehouseman at the City of Toronto.
2. From the day of 19 , to the day of
19 , the plaintiff as such warehouseman, kept, took
care of, and warehoused certain goods for the defendant at his
request at \$ per month.

3. Before and at the commencement of this action the
sum of \$ was due from and payable by the defendant to
the plaintiff in respect of the matters aforesaid, full particu-
lars of which have been delivered by the plaintiff to the de-
fendant [*or, are as follows: giving them*].

4. The said sum is still due and unpaid.

The plaintiff claims \$ and his costs of action.

SECTION LXIV.—WARRANTY.

*(Formal parts: see No. 123.)***371**Claim for
warranty of a
horse.

1. On or about the day of 19 , the defendant
sold to the plaintiff a horse for the sum of \$ warranting
[in writing] that the said horse was then sound.

2. The plaintiff paid the said \$ to the defendant as the
price of the said horse.

3. The said horse was not then sound. (*State the defects
according to the facts.*)

4. In consequence of such unsoundness the said horse was
worth much less than the said sum of \$ [*or was useless
to the plaintiff*] and was resold by the plaintiff for the sum
of \$ which was all that the said horse was worth.

The plaintiff claims \$ damages and his costs
of this action.

SECTION LXV.—WATER.

*(Formal parts: see No. 123.)***372**

Claim to restrain diversion of a water-course.

Between—*T.M.*, Plaintiff,
and

A.G. and *J.G.*, Defendants.

1. Prior to the 15th day of June, in the year 19 , the plaintiff was the owner of all and singular (*describe lands.*)

2. By an indenture bearing date the said 15th day of June, in the year 19 , made between the plaintiff of the first part; *M.A.M.*, his wife, for the purpose of barring dower, of the second part; and one *J.R.*, of the third part, the plaintiff did grant and convey the said lands and premises to the said *J.R.*, his heirs and assigns, reserving, however, to himself by the said indenture the right to enter upon the said lands and premises, and lay down a pipe or drain to a spring thereon from the road in front of the said lands, and the right to lead the water of the said spring to the said road for the use of the public at all times.

3. That by an indenture bearing date the 4th day of November, in the year 19 , the said *J.R.* sold and conveyed the said lands and premises to the defendant *A.G.*, who now claims to be the owner thereof.

4. The defendant *J.G.* is or claims to be in possession of the said lands and premises as tenant of the said defendant *A.G.*

5. The spring hereinbefore referred to as being upon the said lands and premises is a valuable one, affording a never-failing supply of water.

6. In accordance with the rights reserved by the said deed, and the intention with which the same were reserved, the plaintiff, in or about the month of June in the year 19 , at a considerable expense to himself, caused and procured a pipe to be laid from the said spring to the only road on which the said lands and premises abut, whereby the waters of the said spring were brought therefrom to the said road and allowed to fall into a large wooden trough for the use of the plaintiff and his cattle and that of the public at large.

7. The defendants were well aware of the reservations contained in the said indenture firstly mentioned, and of the plaintiff's rights thereunder.

8. The said defendants were well aware of the plaintiffs having caused and procured such pipe to be placed upon the said lands as aforesaid, and were present at the time the said work or a portion thereof was being done, and offered no objection thereto; but acquiesced in the said work being done, and recognized and admitted the plaintiff's right to lay the said pipe and to the use of the water as aforesaid.

9. The defendant *J.G.*, lately at the suggestion and with the knowledge and concurrence of the other defendant, with the view and intention of cutting off the supply of water through the said pipe from the said spring, has caused a pipe or drain to be laid or made, intersecting the pipe placed upon the said lands by the plaintiff as aforesaid, whereby the supply of water from the said spring through the said pipe to the road is interfered with and wholly diverted and caused to flow through the pipe or drain so laid by the defendant *J.G.*; and the defendants have also, by placing other obstructions in the flow of the said water, diverted the same from the pipe placed upon the said lands by the plaintiff as aforesaid.

10. That by means of the said pipe or drain of the defendants, the supply of water which the plaintiff is entitled to by virtue of the reservation in the indenture aforesaid is wholly withdrawn, and the plaintiff's rights under the said reservation have been injured and damnified.

11. The plaintiff submits that the defendants ought to be restrained from diverting or continuing to divert the water of the said spring from flowing through the pipe so placed by the plaintiff upon the said lands, and from further interfering with the plaintiff's rights reserved by the said indenture, and ought to be ordered to remove any obstructions placed by them or either of them which prevent or hinder the flow of water from the said spring to the road through the pipe so placed upon the said lands by the plaintiff.

The plaintiff claims:

1. A declaration by this Honourable Court of his rights under the said indenture.

2. An injunction restraining the defendants from diverting and continuing to divert the water of the said spring from flowing through the pipe so placed upon the said lands and premises by the plaintiff, and from further interfering with the plaintiff's rights under the said indenture.

3. A direction to the defendants to remove any obstruction placed or caused to be placed by them, or

either of them, whereby the waters of the said spring are prevented or hindered from flowing through or by the said pipe to the road as aforesaid.

4. An account of the damage sustained by the plaintiff by reason of the diversion of the said water by the defendants as aforesaid.

5. An order for the payment by the defendants of such damage.

6. The costs of this action.

7. For these purposes all necessary and proper directions to be given and accounts taken as the nature and circumstances of the case require, and as to this Honourable Court shall seem meet.

SECTION LXVI.—WILLS.

(*Formal parts: see No. 123.*)

373

Claim for construction of will.

Between—*H.N.R.* and *D.McL.*
and

Plaintiffs,

A.M.E. and *L.A.S.*, and *F.E.S.* his wife, and
A.W.E., *S.S.E.* and *F.A.E.*, infants under
the age of twenty-one years Defendants.

1. One *S.E.*, late of the Town of Port Hope aforesaid, duly made his last will and testament in writing, bearing date the 2nd day of November, 19 , and duly executed in a manner sufficient according to the laws of this Province for the effectual disposition of real and personal estate.

2. The said last will and testament is in the words and figures following, that is to say: (*set out will.*)

3. The said *S.E.* departed this life, at the Town of Port Hope aforesaid, on the 17th day of May, A.D. 19 , without having in any matter revoked or altered his said will; and the plaintiffs, who are the executors named therein, duly proved the said will on the 17th day of June, 19 , and took upon themselves the burthen of the trusts thereof.

4. The said *S.E.* left him surviving his widow, the defendant *A.M.E.*, and four lawful children, namely, the defendants *F.E.S.*, the wife of the defendant *L.A.S.*, and *A.W.E.*, *S.S.E.*, and *F.A.E.*, the last three being still infants under

the age of twenty-one years, and the said *S.E.* never had any other children.

5. The said *S.E.* was not possessed of or entitled to, or interested in any real estate at the time of his death, except his interest in so much of the partnership assets hereinafter mentioned as consisted of real estate.

6. The personal property of the said *S.E.*, at the time of his death, consisted almost entirely of his interest in the partnership assets of a certain partnership firm of *E. & W.*, composed of the said *S.E.* and one *A.W.*

7. The said partnership business was a timber and lumber business, which had been carried on for about twenty years before the death of the said *S.E.*, and which was dissolved by the death of the said *S.E.*, and the said partnership assets consisted chiefly of a large quantity of land, situate partly in Ontario and partly in the State of Michigan, one of the United States of America, acquired and held for the purposes of the said partnership business, and of a large quantity of timber manufactured and unmanufactured, and the stock and plant of the said business.

8. The said partnership business has not yet been wound up or settled, nor have the assets thereof been converted or realized, but the winding up thereof is now in progress, and considerable sums of money will soon be available for the purposes of the will of the said *S.E.*

9. The value of the interest of the said *S.E.*, in the said partnership assets is expected, when realized, to exceed the sum of \$50,000, and there are no debts of the said testator's estate of any magnitude.

10. The plaintiffs are advised that the said will is of doubtful construction, and that they could not, with safety, distribute the estate of the testator between his widow and children without the aid and sanction of this Honourable Court.

11. The said *A.M.E.*, the widow of the testator, claims to be entitled to the whole of the testator's personal estate, with power to apply the same according to her absolute discretion, for her own benefit and that of her children, but the plaintiffs are advised that it is doubtful whether the said *A.M.E.* has an absolute interest in any part thereof, or if she has, whether such absolute interest extends to more than an undivided fifth part thereof, the rest belonging absolutely to the children.

The plaintiffs therefore claim:

1. A declaration by this Honourable Court of the rights and interests of the said parties in the personal estate of the testator.
2. Administration of the estate of the testator and of the trusts of the said will under the direction of this Honourable Court.
3. Payment of the plaintiffs' costs of this action.
4. All proper directions to be given and accounts to be taken for the purposes aforesaid.
5. Such further and other relief as the nature of the case may require.

374

Another form
of claim for
construction
of a will.

(*Formal parts: see No. 123.*)

Between—The Reverend J.W.M., Plaintiff,
and

J.W. and R.W.W. (her husband), M.W. and
The Reverend W.W. (her husband), E.F.
and J.F. (her husband), J.K.W., R.W.G.W.,
M.M. and H.B.M. (her husband), M.W.,
S.B.W., J.W., and M.G.M. (the last three
being infants under the age of twenty-one
years) Defendants.

1. The late E.M. was, in the year of our Lord 1869, married to the plaintiff, without any ante-nuptial settlement.
2. The said E.M. departed this life on the 9th day of June, 19 , having first duly made and published her last will and testament, executed in manner and form sufficient for the purposes therein mentioned, which said will is in the words following, that is to say: (*set out will.*)
3. At the time of her death, the said E.M. was possessed of and entitled to considerable personal estate, which had been bequeathed to her by the will of her father, G.W., who died on or about the 5th day of October, A.D. 19 .
4. Probate of the said will of the said E.M. was duly granted to the plaintiff by the proper Court in that behalf; the other executors named therein having renounced and disclaimed.

5. *J.I.*, in the said will named, has since intermarried with, and is now the wife of the defendant *R.W.W.*

6. *M.D.*, in the said will named, has since intermarried with and is now the wife of the defendant the Reverend *R.W.W.*

7. *A.M.*, in the said will named, is no longer residing with the plaintiff, and now claims no benefit under the said will.

8. The defendants, *J.K.W.*, *R.W.*, *G.W.*, *M.M.*, *M.W.*, *S.B.W.*, and *J.W.* are the brothers and sisters of the said *E.M.*

9. The defendant, *M.M.*, is the wife of the defendant *H.B.M.*

10. The defendants, *S.B.W.* and *J.W.*, are infants under the age of twenty-one years.

11. The defendant, *M.G.M.*, who is the only child of the said testatrix, is an infant of tender years.

12. The plaintiff has been advised that it is doubtful whether the said *E.M.* had, by law, the power to make the dispositions of her estate in the said will contained, and that it is proper to seek the direction of this Honourable Court.

13. It is doubtful whether, under the Mortmain and Charitable Uses Act and other Acts, the devises and bequests to the (*naming the corporations*) are valid.

14. It is doubtful whether the residuary bequest in favour of the defendants, the brothers and sisters of the said testatrix, is valid.

15. It is doubtful whether the bequest to the infant defendant, *M.G.M.*, is entitled to priority, and to be paid in full, and whether it must abate in the event of a deficiency.

16. It is doubtful whether the said legacies mentioned in the thirteenth paragraph hereof, if valid, should abate proportionably in the event of a deficiency.

The plaintiff claims:

1. To have the said will interpreted and the trusts thereof declared by this Honourable Court, and the rights and interests of all the parties hereto ascertained and declared.

2. Such further and other relief as may seem meet.

(*Formal parts: see No. 123.*)

375

Claim to set aside deed obtained by undue influence and to establish a prior will.

Between—A.W.

Plaintiff,

and

H.H.W. and D.L.W.

Defendants.

1. One A.W. the elder, the father of the plaintiff, was in his lifetime the owner in fee simple of or otherwise well entitled to that certain parcel or tract of land and premises, situate lying and being in the Township of M. in the County of Y. being composed of the west half of lot No. 15, in the 7th concession of the said Township, containing 100 acres: and while he was the owner thereof as aforesaid, he duly made and published his last will and testament in writing, executed so as to pass real estate by devise in this Province; whereby he devised the said lands and premises to the plaintiff in fee.

2. The said A.W. departed this life in the month of September, 19 .

3. At the time when the said A.W. made his said will, and for some years before, the defendant H.H.W. who is a brother of the plaintiff, was residing with his father, the said A.W., and was managing his business and affairs, and the said defendant had thus acquired great influence and control over the mind of his said father who reposed the greatest confidence in him.

4. Some years after the making of the said will the mind of the said A.W. became impaired, and he became and was imbecile and incapable of understanding or comprehending the most ordinary business matters, and the said defendant continued to manage and control all his affairs, and the said defendant's influence over his said father, and his said father's reliance upon and confidence in him, increased to such an extent that the said A.W. had no independent will of his own, and he was wholly guided and controlled in everything by the said defendant H.H.W.

5. In or about the year 19 , the said defendant H.H.W. formed the fraudulent design of depriving the plaintiff of the benefits of the devise to him contained in the will hereinbefore mentioned, and in order to accomplish his said design, the said defendant, fraudulently making use of the influence he had acquired over his said father, induced and prevailed upon his said father to convey the hereinbefore described lands to him, and accordingly by deeds bearing date the 30th day of May, 19 , and purporting to be made between the said A.W., of the

first part, and the said defendant, of the second part, the said *A.W.* purported to convey the said lands in fee to the said defendant *H.H.W.*

6. The said deed purports to be made in consideration of certain moneys then paid by the said defendant *H.H.W.* to the said *A.W.*, but no money or other consideration was paid to or received by the said *A.W.*, for the said conveyance.

7. At the time of the making of the said deed, the said *A.W.* was imbecile and wholly incapable of understanding the nature and effect of the same, and he did not in fact understand the nature and effect thereof.

8. At the time of making the said deed, the said *A.W.* was, and acted, wholly under the influence of the said defendant *H.H.W.*, and the said defendant, fraudulently exercising his influence and control over the said *A.W.*, induced the said *A.W.* to make the said deeds in order to deprive the plaintiff of the benefit of the devise to him contained in the said will, and to obtain the said lands for himself, and in the making of the said deed, the said *A.W.* exercised no will of his own, but, in truth and in fact, acted as he was instructed by the said defendant.

9. The said *A.W.* acted in making the said deed wholly without professional or other independent advice, and the said defendant *H.H.W.* prevented him from obtaining such advice before making the said deed.

10. At the time of making the said deed, the defendant *H.H.W.* was living with the said *A.W.* and although other members of the family of the said *A.W.* resided in the neighbourhood of, and were in the habit of visiting, the said *A.W.*, the said defendant *H.H.W.* prevailed upon the said *A.W.* to conceal from them that he was about to convey, or had conveyed, the said lands to the said defendant *H.H.W.*, and the said defendant kept the making of the said deed concealed from the other members of the family until after the death of the said *A.W.*

11. The mind of the said *A.W.* continued impaired and he remained and was imbecile and incapable of understanding or managing business matters up to the time of his death hereinbefore mentioned.

12. The said *A.W.* died without having altered or revoked the said will save in so far as the same was affected by the making of the said deed.

13. Immediately after the death of the said *A.W.*, the said defendant *H.H.W.* took possession of the said will and he has ever since retained and kept possession thereof, and he alleges and pretends that no such will was ever made, or that if such a will was made it is not now in existence.

14. The defendant *D.L.W.* is also interested under the said will; but, in consequence of the said will being in the possession of the defendant *H.H.W.*, the plaintiff is unable to set forth the nature and particulars of the interest of the said *D.L.W.* thereunder, and the said *D.L.W.* declines to join with the plaintiff and become a party plaintiff hereto.

15. The defendant *H.H.W.*, has been in the possession of the said lands and premises, and in receipt of the rents and profits thereof, ever since the death of the said *A.W.*

16. The defendant *H.H.W.* threatens and intends and will, unless restrained by the injunction of this Honourable Court, sell and convey the said lands and premises to some innocent purchaser for value without notice of the plaintiff's rights.

The plaintiff claims:

1. Discovery by the defendant *H.H.W.* of the contents of the said will, and of the matters hereinbefore set forth.

2. The establishment of the said will by this Honourable Court.

3. A declaration that the said deed to the said defendant *H.H.W.* is fraudulent and void, and should be set aside.

4. The order and direction of this Honourable Court that the defendant *H.H.W.* convey the hereinbefore described lands and premises to the plaintiff and account to the plaintiff for the rents and profits thereof.

5. An injunction restraining the defendant *H.H.W.* from selling, alienating, or otherwise disposing of or dealing with the said lands and premises.

6. The costs of this action.

7. Such further and other relief as may appear just.

CHAPTER IV.

INTERLOCUTORY PROCEEDINGS.

SECTION I.—PRAECIPES.

Amendment.

(*Title, &c.*) (a).

Amend [in pursuance of order dated] the writ of ^{Præcipe for} summons [*or the statement of claim, or as may be*] in this ^{amendment of} action by (*set out amendments where required*). ^{writ tc. (b)}

Dated the day of 19 .

(*Signed*)

Solicitor for the

Con. Rules, 1888, Form 91.

Renewed Summons. (Rule 132.)

(*Title, &c.*)

Required [in pursuance of order dated], a renewed ^{For renewed} writ of summons in this action, ^{writ of sum-}mons. (c)

Dated the day of 19 .

(*Signed*)

Solicitor for the

Con. Rules, 1888, Form 92.

(a) In all præcipes the short style of cause (*e.g., Jones v. Smith*), is sufficient. See No. 26.

(b) Con. Rules 1897, Form 25.

(c) Con. Rules 1897, Form 26.

*Habeas Corpus ad Testificandum.***378**For writ of
habeas corpus,
ad test. (a)

(Title, &c.)

Required in pursuance of order dated a writ of habeas
corpus ad testificandum directed to the to bring before

Dated the day of 19 .

(Signed)

Solicitor for the

Con. Rules, 1888, Form 104.

Commission to Examine Witnesses. (Rule 499.)

(Title, &c.)

379For commis-
sion. (b)Required in pursuance of order [or Master's certificate]
dated a commission to examine witnesses directed to

Dated the day of 19 .

(Signed)

Solicitor for the

Con. Rules, 1888, Form 103.

Setting down for Argument Generally.

(Title, &c.)

380For setting
down for argu-
ment. (c)

Set down for argument the

Dated the day of 19 .

(Signed)

Solicitor for the

Con. Rules, 1888, Form 98.

(a) Con. Rules 1897, Form 30.

(b) Con. Rules 1897, Form 31.

(c) Con. Rules 1897, Form 32.

Entry (or Setting down) of Action for Trial. (Rules 538, 542.)

(*Title, &c.*)

Enter [*or set down*] this action for trial at the sittings of the High Court [*or Assizes*] at _____ commencing on _____

381
For entry of action for trial. (*d*)

Dated the _____ day of _____ 19 .

(*Signed*)

Solicitor for the

Con. Rules, 1888, Form 102.

Setting down of Special Case.

(*Title, &c.*)

Set down for argument the special case filed in this action on the _____, day of _____, 19 . ; [*or set down the* _____ dated _____ the _____ referee in this _____ day of _____ 19 , of Mr. _____ the _____ for hearing as a special case].

382
For setting down special case. (*e*)

Dated the _____ day of _____ 19 .

(*Signed*)

Solicitor for the

Con. Rules, 1888, Form 100.

Setting down of Appeal. (Rule 804.)

(*Title, &c.*)

Set down this appeal from the order [*or judgment*] of _____ in this action dated the _____ day of _____ 19 .

383
For setting down appeal (*f*)

(*Signed*)

Solicitor for the

Con. Rules, 1888, Form 105.

(*d*) Con. Rules 1897, Form 33.

(*e*) Con. Rules 1897, Form 34.

(*f*) Con. Rules 1897, Form 35.

Fieri Facias. (Rule 866.)

(Title, &c.)

384For writ of
fi fa. (a)

Required a writ of fieri facias directed to the Sheriff of
to levy against *C.D.* the sum of \$ and interest
thereon at the rate of \$ per centum per annum from
the day of to [and \$ costs].

Judgment [or order] dated day of

Taxing Master's certificate, dated day of

Dated the day of 19 .

(Signed)

Solicitor for the (*party on whose behalf
writ is to issue*).

Con. Rules, 1888, Form 106.

Venditioni Exponas. (Rule 866.)

(Title, &c.)

385For writ of
*venditioni ex-
ponas.* (b)

Required a writ of venditioni exponas directed to the She-
riff of to sell the goods and chattels [or lands and
tenements] of *C.D.*, taken under a writ of fieri facias in this
action tested day of .

Dated the day of 19 .

(Signed)

Solicitor for the

Con. Rules, 1888, Form 106.

Writ of Possession. (Lands). (Rule 866.)

(Title, &c.)

386For writ of
possession. (c)

Required a writ of possession directed to the sheriff of
to deliver possession to *A.B.* of .

Dated the day of 19 .

(Signed)

Solicitor for the

Con. Rules, 1888, Form 109.

(a) Con. Rules 1897, Form 36.

(b) Con. Rules 1897, Form 37.

(c) Con. Rules 1897, Form 38.

Writ of Delivery. (Chattels.) (Rule 866.)

(Title, &c.)

Required a writ of delivery directed to the Sheriff of
to make delivery to A.B. of .

387
For writ of
delivery. (c)

Dated the day of 19 .

(Signed)

Solicitor for the

Con. Rules, 1888, Form 110.

Writ of Attachment. (Rule 866.)

(Title, &c.)

Required in pursuance of order dated _____ day of _____ For writ of
an attachment directed to the Sheriff of _____ against C.D. for attachment.
not delivering to A.B. (d)

388

Dated the day of 19 .

(Signed)

Solicitor for the

Con. Rules, 1888, Form 111.

Writ of Sequestration. (Rule 866.)

(Title, &c.)

Required a writ of sequestration against *C.D.*
not at the suit of *A.B.* directed to the Sheriff of
Order dated day of .

for **389** For writ of se-
questration.
(e)

Dated the day of 19 .

(Signed)

Solicitor for the

Con. Rules, 1888, Form 108.

(c) Con. Rules 1897, Form 39.

(d) Con. Rules 1897, Form 40.

(e) Con. Rules 1897, Form 41.

*Praeipie for Direction to the Bank. (Rule 407.)***390**

For direction
to pay money
into court (a)

In the Court of Appeal,
or
In the High Court of Justice.

(Title, &c.)

Required a direction from the Bank to receive from
\$, under order dated
(or as the case may be). (b).

Date.

Folio.

A.B.,
Defendant's Solicitor,
(or as the case may be.)

Con. Rules, 1888, Form 112.

*Praeipie for Cheque. (Rule 416.)***391**

For cheque.
(c)

In the Court of Appeal,
or
In the High Court of Justice.

(Title, &c.)

Required a cheque for \$ with \$ interest
thereon from to (being for a period, if any, for
which interest is payable under the order or judgment, but
which has not already been taken into account and computed),
payable to.....

Date.

Folio.

A.B.
Plaintiff's Solicitor,
(or as the case may be.)

Con. Rules, 1888, Form 113.

(a) Con. Rules 1897, Form 42.

(b) Where money is paid into Court by way of security for costs
without a special order, the purpose for which the money is to be
paid in must be stated, e.g.: "\$ as security for costs of the
defendant" (or as may be): see Rule 1207 (2).

(c) Con. Rules 1897, Form 43

Search.

(*Title, &c.*)

Required a search for

Dated the day of , 19 .

(*Signature of Solicitor.*)

Con. Rules, 1888, Form 101.

392

For search. (*d*)

SECTION II — CERTIFICATES.

In the High Court of Justice.

394

Certificate of
lis pendens.

I certify that in a suit or proceeding in the High Court of Justice, between plaintiff, and defendant, some title or interest is called in question in the following lands; that is to say (*description of the land sufficient for registration*) and at the request of the said plaintiff, this certificate is given for the purpose of registration, pursuant to the Statute in such case made and provided.

Given under my hand, and the seal of [the said Court],
this day of , A.D. 19 .

Dated at

(*Signature*)

Clerk of Records and Writs.
or Deputy [*or Local*] Registrar, H.C.J.
or Deputy Clerk of the Crown, H.C.J.

In the High Court of Justice.

395

Certificate of
judgment or
order for
registration.

This is to certify that by a bearing date the
day of , A.D. 19 , and made by the said Court
in a certain action therein pending, wherein ,
plaintiff, and defendant, upon the application
of , it was ordered that (*state what*).

And this is further to certify that the lands in question in
the said action are the following, that is to say: (*set out de-
scription*).

And at the request of this certificate is given for
the purpose of registration pursuant to the Statute in that
behalf.

Given under my hand, and the seal of [the said Court],
this day of , A.D. 19 .

(Signature)

Clerk of Records and Writs.
or Deputy [or Local] Registrar, H.C.J.,
or Deputy Clerk of the Crown, H.C.J.

396

Certificate of
the state of
the cause.

(Style of cause as in No. 24 or 25.)

This is to certify that the plaintiff issued Writ of
Summons in this action, on the day of 19 .

Since which no further proceeding has been taken in this
cause, as by my books appears.

(Signature)

Clerk of Records and Writs.
or Deputy [or Local] Registrar, H.C.J.
or Deputy Clerk of the Crown, H.C.J.

SECTION III.—NOTICES, DEMANDS, ETC.

Notices of Payment into Court. (Rule 422.)

397

Notice of pay- In the High Court of Justice.
ment into
court. (a)

Between—A.B., Plaintiff,
and
C.D., Defendant.

Take notice that the defendant has paid into Court \$
in satisfaction of the plaintiff's claim [or the plaintiff's claim,
for, &c.].

Dated, &c.

To Mr. X.Y.,
the Plaintiff's Solicitor.

Z.,
Defendant's Solicitor.

Con. Rules, 1888, Form 21.

Acceptance of sum paid into Court. (Rule 423.)

In the High Court of Justice.

Between—A.B., Plaintiff,
and
C.D., Defendant.

Take notice, that the plaintiff accepts the sum of \$
paid by you into Court in satisfaction of his claim herein [*or*
of his claim for, &c.].

Dated, &c.

X.Y.,
Plaintiff's Solicitor.

To Mr. Z.,
Defendant's Solicitor.

Con. Rules, 1888, Form 22.

(Style of cause, see No. 26.)

Please furnish with true cop
the filed by you herein on the day of
Dated day of , A.D. 19 .

Yours, &c.

To

399
of Demand of
copy of affi-
davit or other
paper.

SECTION IV.—MOTIONS, GENERALLY.

Notice of Motion to Court.

In the High Court of Justice.

Between (d) Plaintiff,
and
Defendant.

Take notice, that the Court will be moved on behalf of
the at Osgoode Hall, Toronto (*or as may be*)
on day the day of , 19 ,
at o'clock in the forenoon, or so soon thereafter
as counsel can be heard, for an order that (*state the object of*

400
General form
of notice of
motion in
court (c)

(b) Con. Rules 1897, Form 53.

(c) Con. Rules 1897, Form 57.

(d) The shortened style of cause No. 25, may be used.

the intended application) or for such other order as may seem just. [*In cases where it is necessary to set out the grounds of the motion, add upon the following grounds, stating them concisely.*]

And take notice that in support of such motion will be read (*state the affidavits or other evidence to be used*).

(Signed)

Solicitor for the

Dated the day of , 19 .

To

Solicitor for

Con. Rules, 1888, Form 10.

401

Another form. In the High Court of Justice.

(*Full style of cause, or shortened style: see No. 400.*)

Take notice, that this Court will be moved at Osgoode Hall, Toronto, [*or at the Weekly Sittings thereof at the City of Ottawa or London, or as the case may require*] on day, the day of , at o'clock in the forenoon, or so soon thereafter as counsel can be heard on behalf of [*state on whose behalf the motion is to be made, as: the plaintiff, or the defendant, or the plaintiff A.B. an infant, by C.D. his next friend, or by C.D., of the Town of , gentleman, his next friend, for the purpose of the said motion, or as may be (a)*]; for [*state the precise object of the motion; as thus: for an injunction order restraining the defendant A.B. from, stating act to be restrained, or such other order as may be just (b).*]

(a) If the motion is made by a sole plaintiff or by all the plaintiffs, or by a sole defendant or all the defendants, it is unnecessary to set out the names in full. If the motion is made by some of several plaintiffs or defendants, the names of the parties should be specified. If by a stranger to the suit, his christian name and surname and place of residence and addition should be set out, whether he be moving on his own behalf or on behalf of some other person under disability.

(b) Where special leave has been obtained to serve the notice, or to give the notice for a non-motion day, or for a motion day short of the ordinary two clear days after service, or at a special hour or place, that fact should be stated, either by inserting after the word "that" in the first line of the notice the words "by the special leave of the Hon. Mr. Justice ———," or as may be or by adding a similar statement at (b), thus: "And also take notice that special leave to serve you with this notice—if so, and to give this notice for the day [and hour and place] aforesaid—has been obtained from the Hon. the Chancellor (*or as may be*)"—or, "And also take notice that special leave to give this notice for the day and [hour and place] aforesaid has been obtained from the Hon. the Chancellor (*or as may be*)."

And take notice, that on such motion will be read the affidavits of _____, this day filed [*or* filed on the day of _____, 19____, *or*, the depositions of _____ taken—*or*, to be taken—before A.B., Special Examiner at [mentioning specially the matter by which the motion is to be supported.]

Dated this _____ day of _____, 19____.
(*Name, &c., of solicitor or party giving the notice.*)

To (insert names of the solicitors or parties to whom the notice is given).

(*Style of cause: see Form No. 400.*)

Take notice, that an application will be made to the presiding Judge at the next sittings of this Court for the trial of actions to be holden at the town of _____, on the _____, 19____.
(*Conclude as in Form No. 400.*)

402
Formal parts of notice of motion to a judge at the trial.

Notices of Motion in Chambers.

(*Title, &c.: see No. 400.*)

Take notice that a motion will be made on behalf of _____ before the presiding Judge in Chambers [*or* the Master in Chambers, *or as the case may be*], at Osgoode Hall, in the City of Toronto, (*or as the case may be*) on _____ day the _____ day of _____ 19____, at _____ o'clock in the _____ noon, *or* so soon thereafter as the motion can be heard, for an order for _____ time to, &c.

403
General form of notice of motion in Chambers. (c)

or, that _____ be awarded judgment in this action for the amount indorsed on the writ with interest (*if any*), and costs; _____

For final judgment under Rule 603.

or, that the plaintiff be at liberty to amend the writ of summons in this action by [*or* the statement of claim *or as may be*];

To amend.

or, that the _____ do furnish the said _____ with a statement in writing, verified by affidavit, setting forth the names of the persons constituting the members or co-partners of their firm;

For particulars (partnership).

For particulars (generally). *or, for an account in writing of the particulars of the plaintiff's claim in this action [with dates and items, or as the case may be], and that unless such particulars be delivered in four days, all further proceedings be stayed until the delivery thereof:*

For particulars (accident): *or, for an account in writing of the particulars of the injuries and expenses mentioned in the statement of claim, together with the time and place of the accident, and the particular acts of negligence complained of, and that unless such particulars be delivered within days, all further proceedings be stayed until the delivery thereof;*

To discharge or vary order. *or, that the order of in this action, dated the day of , 19 , be [discharged, or varied by, &c.], on the grounds disclosed in the affidavit of , filed in support of this application;*

To dismiss action. *or, that this action be dismissed for want of prosecution, with costs to be taxed and paid to the defendant by the plaintiff, the plaintiff not having, &c.;*

To examine witness before trial. *or, that a witness on behalf of the be examined forthwith before upon the usual terms;*

For commission to examine witnesses. *or, that the be at liberty to issue a commission for the examination of witnesses on behalf at and that the trial of this action be stayed until the return of such commission upon the usual terms;*

To refer under section 28 of 60 V. c. 16, s. 28 (a). *or, that the following question arising in this action, namely: be referred for inquiry and report to under section 28 of The Arbitration Act;*

To refer under section 29 of 60 V. c. 16, s. 29 (b). *or, that the in this action be tried by under section 29 of The Arbitration Act;*

For examination of judgment debtor as to means (c) *or, that the above-named judgment debtor be orally examined as to whether any and what debts are owing to him, and do attend for that purpose before the Master in Chambers (or as the case may be) at such time and place as he may appoint, and that the said judgment debtor produce his books, &c., before the said Master at the time of the examination; &c.)*

(a) R. S. O. 1897 c. 62, s. 28.

(b) R. S. O. 1897 c. 62, s. 29.

(c) An order is not ordinarily necessary, but must be moved for on notice in special cases, for instance where it is desired to examine a debtor a second time.

or, that this action be tried before the County Court of holden on

For trial of action in County Court.

or, for an interpleader order and you the said and are hereby notified to appear at the said time and place and state the nature of your respective claims to [stating the debt, money, goods, &c., e.g., the insurance moneys payable under policy No. in the (defendants') Company, now in the hands of the (defendants), or a car of lumber now in the possession of the above-named Railway Company, consigned to A.B., or the goods and chattels seized by the above-named sheriff under the writ of *fieri facias* issued in this action] and maintain or relinquish the same and abide by such order as may be made herein.

Con. Rules, 1888, Form 11.

(Conclusion.)

And take notice that in support of such motion will be read the affidavits of this day filed [or filed the day of 19], and the exhibits therein referred to and the (naming any other affidavits intended to be used or other papers, such as the writ, pleadings, orders, &c.).

Dated this day of , A.D. 19 .

A.B.,

Solicitor for the

To C.D.,

Solicitor for the

(Formal parts as in No. 400 or No. 403, as the case may require.)

404

for an order that an account may be taken. [Specify the account required in accordance with the claim indorsed on the writ, for example:—That an account (with all necessary and proper directions) may be taken by the Master in Ordinary (or as may be desired) of the partnership dealings between the plaintiff and defendant under the articles of partnership dated the day of , 19 , mentioned in the statement of claim herein (and that the said partnership may be dissolved)].

Notice of motion for an account. (d)

(d) See Con. Rules 645 and 646.

Another form. *Or*, that the following accounts and inquiries may be directed to be taken (*set out thus*)—

(1) An account of, &c.,

(2) An inquiry whether, &c.,

and that such accounts and inquiries may be directed to be made and taken before (*specifying the Master, or Official Referee*).

(*Formal parts: see No. 403.*)

405

Notice of motion for an inquiry as to the title in an action for specific performance. (a)

on the part of the plaintiff, that an inquiry may be directed whether a good title can be made to the hereditaments comprised in the agreement dated the day of , 19 , in the plaintiff's writ [*or* statement of claim] mentioned; and if a good title can be made, then a further inquiry when it was first shewn that a good title could be made. And take notice (*&c., as in No. 403.*)

(*Formal parts: see 403.*)

406

Notice of motion for further time to defend.

on the part of the defendant *A.B.*, that he may have days further time to [deliver his statement of defence herein] and that the costs of this application may be costs in the cause. And take notice, that on such motion will be read (*&c., as in No. 403.*)

(*Affidavit accounting for delay accompanies. See No. 408.*)

(*Formal parts: see No. 403.*)

407

Notice of motion for leave to defend after note of default in pleading.

on the part of the defendant *A.B.*, that the note of default of pleading entered herein on the day of , [*or* the judgment herein, dated the day of], may be vacated and set aside, and that the defendant *A.B.* may be at liberty to file a statement of defence herein (*&c., as in No. 403.*)

(*Formal parts: see No. 403.*)

2. The writ of summons [*or statement of claim*] herein was served on my solicitor *A.B.*, on the day of 19 , as I am informed by him and believe.

408

Affidavit in support of , application for further time.

3. *Shew, succinctly, in numbered paragraphs, that due diligence has since been used to prepare statement of defence, and the present state of the cause, and account for delay.*

4. I have a good defence to this action on the merits, and it is essential to the due preparation and completion of the said defence that further time should be granted to put in the same. The pending application by me for such further time is not intended for the purpose of delay or vexation.

(*Formal parts: see No. 403.*)

On the part of the defendant that notwithstanding the expiration of the time limited by the Consolidated Rules of Court, the defendant may be at liberty to deliver a further defence in this action, setting forth the ground of defence to the plaintiff's claim, which has arisen since the delivery of the defence [*or since the expiration of the time limited for delivering a defence*] in this action, or for such order in the premises and as to costs as may be just.

409

For leave to deliver further defence.

(*Formal parts: as in No. 744.*)

2. The defence in this action was delivered [*or the time limited for delivering a defence in this action expired*] on the day of , 19 .

410

Affidavit in support.

3. [*State the defence and the date on which the ground of defence arose, for example: On the day of by deed of release bearing date on that day and made between the plaintiff of the one part and the defendant on the other part, duly executed and delivered under the hand and seal of the plaintiff, the plaintiff released the defendant from all liability under or by virtue of the contract mentioned in the paragraph of the statement of claim and from all actions, claims and demands by the plaintiff upon or in respect of the said contract.*]

4. (*Account for the delay in moving.*)

411

Notice of motion to set aside proceedings for irregularity.

(*Formal parts: see No. 403.*)

on behalf of the plaintiff for an order setting aside [the writ of *fiery facias* issued out of this Honourable Court on the part of the defendant *C.D.* against the goods and chattels, &c., of the plaintiff, on the day of , and directed to the Sheriff of the County of , and all proceedings had thereon], on the ground that the same is irregular, because (*state the grounds of irregularity intended to be relied on*).
(a). And take notice, (&c., as in No. 403).

412

Notice of motion to strike out scandalous matter.

(*Formal parts: see No. 403.*)

On the part of the plaintiff (*or as may be the case*) that paragraphs Nos. in the affidavit of (*or otherwise, indicating the scandalous matter*), filed on the day of , 19 , may be struck out as scandalous [and impertinent or irrelevant] and that the defendant , on whose behalf the said affidavit was filed, may be ordered to pay the costs of and occasioned by such scandalous [and impertinent or irrelevant] matter and the costs of this application.

413

Notice of motion to take affidavit off the files for scandal or impertinence.
(b)

(*Formal parts: see No. 403.*)

on behalf of the defendant, that the affidavit of filed in this cause on behalf of the plaintiff, on the day of 19 , may be taken off the files of this Court, as being scandalous and impertinent, and that the whole of the seventh paragraph of the affidavit of the plaintiff, filed on the day of 19 , may be expunged, as being scandalous and impertinent, and that the plaintiff on whose behalf the said affidavits were filed may be ordered to pay the costs of and occasioned by such affidavits, and the costs of this application. And take notice (&c., as in No. 403.)

(a) See Rule 362.

(b) See *Middlemas v. Wilson*, L. R. 10 Ch. 230. Where affidavits or other papers are ordered to be taken off the file of the Court for scandal or impertinence, the officer in whose custody the same may be, on production of the order seals up the objectionable document, so that it can no longer be read, and indorses on the cover, "In H. C. J.—*Brown v. Jones*—Taken off the file for scandal (*or as may be*), under order dated —".

"A. H., Clerk of R. and W. (*or other proper officer*).

If any part of a document is ordered to be expunged, the officer having the custody of it, on production of the order expunges the part, and writes a memorandum on the margin, opposite the part or parts expunged, "Expunged under order dated, &c."

"A. H., Clerk of R. and W. (*or other proper officer*).

(Formal parts: see No. 403.)

that the statement of claim (or as may be) herein [or paragraphs numbered in the statement of claim, or as may be], may be struck out as tending to embarrass the plaintiff [or defendant] and delay the fair trial of this action.

(Formal parts: see No. 403.)

that the defendant's counterclaim [or paragraphs numbered of the defendant's counterclaim] may be struck out or excluded. To exclude counterclaim or paragraphs thereof.

(Formal parts: as in No. 400 or No. 403, as the case may require.)

On the part of the defendant [or plaintiff] that the statement of claim [or defence or counterclaim] may be struck out on the ground that it discloses no reasonable cause of action [or answer, or as may be], and that except for the purposes of the order to be made on this application all proceedings in this action may be stayed [or that this action may be dismissed, or that judgment may be entered for the plaintiff in accordance with his claim], and that the costs of the applicant of this action and of this application may be paid by the plaintiff [or defendant, or as may be].

(Formal parts: as in No. 400 or 403.)

On the part of the defendant [*or of the defendant C.D.*] that all proceedings in this action may be stayed [as against the applicant, *or* that this action may be dismissed], on the ground that it is frivolous and vexatious, and that the plaintiff may be ordered to pay to the applicant his costs of this action and this application.

(*Formal parts: see No. 403.*)

that the judgment entered in this action on the _____ day
of _____, 19____, [where necessary, and the writ of _____ judgment by
issued on such judgment on the _____ day of _____, 19____,] default.

may be set aside [as irregular in that, *here specify the irregularity, e.g.,* the writ of summons was not duly served on the defendant, or the said judgment was entered before the expiration of the time limited by the writ of summons for the defendant to appear thereto], and that the defendant may be at liberty to appear and defend this action. [*Where the motion is on the ground of irregularity add, and that the plaintiff may be ordered to pay to the defendant his costs of this application.*]

SECTION V.—MOTIONS FOR SUMMARY JUDGMENT.

(*Formal parts: see No. 744.*)

419

Affidavit of plaintiff for motion for summary judgment under Rule 603.

1. This action was commenced on the day of , 19 , by a writ of summons specially indorsed with my claim herein, in pursuance of the Rules of the Supreme Court of Judicature, as follows:—(*Set out the indorsement.*)

2. The defendant appeared in this action on the day of , 19 .

3. The defendant at the commencement of this action was and still is justly and truly indebted to me in \$, in respect of the matters in the said indorsement mentioned.

4. [*Here state as concisely as is consistent with clearness the facts upon which the plaintiff's claim is founded. Mere matters of evidence need not necessarily be stated but a good cause of action must be disclosed, and the plaintiff's claim in respect of it verified, and in some cases it may be advisable to state the evidence by which it is supported. The form of the affidavit must necessarily vary according to the facts of each particular case. The statement of facts may be confined to one paragraph or divided into several, as may be most convenient. The affidavit should be made as strong as possible, and any facts tending to shew an admission of the claim by the defendant should be distinctly stated.*]

5. I believe that there is no defence to this action, and that the appearance has been entered for purposes of delay only.

See Form No. 403.

420

Notice of motion for summary judgment under Rule 603.

Order, &c., for leave to defend unconditionally. (Rule 606.)

421

In the High Court of Justice.

The Master in Chambers
(*or as may be.*)

(*Date.*)

Between

Plaintiff,

and

Defendant.

1. Upon the application of _____, and upon reading the affidavit of _____ filed, and upon hearing the Solicitor [or Counsel] for _____.

2. It is ordered that the defendant be at liberty to defend this action by delivering a statement of defence within _____ days after delivery of the plaintiff's statement of claim.

3. And it is further ordered that the costs of this application be _____.

See Con. Rules, 1888, Form 127.

Order for leave to defend on payment into Court. (Rule 606.)

422

In the High Court of Justice.

The Master in Chambers (*or as may be.*)

(*Date.*)

Between

Plaintiff,

and

Defendant.

1. Upon the application of _____, and upon reading the affidavit of _____ filed, and upon hearing the Solicitor [or Counsel] for _____.

2. It is ordered that if the defendant _____ pay into Court to the credit of this action subject to further order within a week from the date of this order the sum of \$ _____, he be at liberty to defend this action by delivering a statement of defence within _____ days after delivery of the plaintiff's statement of claim, but that if that sum be not so paid the plaintiff be at liberty to sign final judgment for the amount indorsed on the writ of summons, with interest, if any, and costs.

3. And it is further ordered that in either event the costs of this application be _____.

See Con. Rules, 1888, Form 128.

(a) Con. Rules 1897, Form 109.

(b) Con. Rules 1897, Form 110.

Orders on motion under Rule 603—
Leave to defend unconditionally. (a)

Leave to defend on payment into Court. (b)

*Order for leave to defend as to part on payment into Court,
and as to residue unconditionally. (Rule 606.)*

423

Leave to defend as to part
on terms (a)

In the High Court of Justice.

The Master in Chambers (*or as may be*).

(*Date.*)

Between

Plaintiff,
and
Defendant.

1. Upon hearing _____, and upon reading the affidavit
of _____ filed, and upon hearing the Solicitor [*or Counsel*]
for

2. It is ordered that if the defendant pay into Court within
a week from the date of this order the sum of \$ _____,
he be at liberty to defend this action as to the whole of the
plaintiff's claim.

3. And it is further ordered that if that sum be not so
paid the plaintiff be at liberty to sign judgment for that sum
and the defendant be at liberty to defend this action as to the
residue of the plaintiff's claim.

4. And it is further ordered that in either event the state-
ment of defence be delivered within _____ days after de-
livery of the plaintiff's statement of claim.

5. And it is further ordered that the costs of this appli-
cation be _____.

See Con. Rules, 1888, Form 129.

424

Final judg-
ment on
motion under
Rule 603. (b)

In the High Court of Justice.

The Master in Chambers
(*or as may be*).

(*Date.*)

Between

Plaintiff,
and
Defendant.

1. Upon the application of _____, upon reading the
affidavit of _____, and upon hearing the Solicitor [*or*
Counsel] for

(a) Con. Rules 1897, Form 111.

(b) Con. Rules 1897, Form 159.

2. It is ordered and adjudged that the plaintiff do recover against the defendant the sum of \$ _____, and costs to be taxed.

*(Signature of Master in Chambers
or other officer.)*

Judgment signed the _____ day of _____

(Signature of the officer signing judgments.)

The above costs have been taxed and allowed at \$ _____,
as appears by a taxing officer's certificate dated the _____ day
of _____, 19 ____.

(Signature of officer signing judgments.)

See Con. Rules, 1888, Form 126.

SECTION VI.—NEXT FRIENDS, GUARDIANS, ETC.

MARRIED WOMEN.

A married woman generally sues alone in respect of a claim accruing to herself, but may sue by her next friend in cases not provided for by "The Married Women's Property Act" (d), but such cases will seldom occur, and where necessary the forms Nos. 425 et seq. can readily be adapted.

INFANTS.

(Formal parts: see No. 403.)

on the part of the infant plaintiff, by A.B., of *(residence and addition)*, his next friend for the purpose of this application, that C.D., the plaintiff's next friend in this action may be removed, and that the said A.B., or some other proper person, may be approved as, and deemed to be such next friend, in lieu of the said C.D.

425

Notice of motion for removal of a next friend, and approval of another. (e)

(d) Rule 199 (2).

(e) The application must be supported by an affidavit of the grounds for the removal of the next friend, and of the fitness to act of the proposed substitute; and the consent of the latter to act must be shewn. See H. & L. notes to Rule 197.

[*If before judgment*: that the proceedings herein may be amended by inserting the name of the said *A.B.*, or other person, as the plaintiff's next friend, instead of the name of the said *C.D.*

Or, if after judgment: that the said *A.B.*, or other person, may be named in all future proceedings in this action, as the plaintiff's next friend, in lieu of the said *C.D.*

And take notice, that on such motion will be read (&c., as in No. 403).

(*Formal parts: see No. 403.*)

426

Notice of motion to substitute a next friend for one desirous to retire, or deceased. (a)

on the part of the infant plaintiff, by *A.B.*, his next friend, that he may be at liberty—

If before judgment: to amend the proceedings herein, by inserting the name of *C.D.*, of (*residence and addition*), as his next friend, in lieu of the said *A.B.*, who is desirous to retire [*or now deceased, or who is incapacitated from acting or who by an order dated the day of , 19 , has been removed.*]

[*Or, if after judgment*: to name *C.D.*, of (*residence and addition*), as his next friend, in all future proceedings in this action, in lieu of the said *A.B.*, who is desirous to retire *or now deceased, or, &c.*]

And take notice, that on such motion will be read (&c., as in No. 403).

(*Formal parts: see No. 403.*)

427

Notice of motion by defendant that a new next friend may be approved for plaintiff.

on the part of the defendant *A.B.*, that a proper person may be approved as next friend of the plaintiff, in lieu of *C.D.*, who has died [*or, become incapable of acting—or, been removed*].

(*Formal parts: see No. 744.*)

428

Affidavit in support of motion or petition.

I.E.F., of (*place of business*), gentleman, the solicitor in this suit for the defendant *A.B.*, make oath and say as follows:

(a) It would seem that in the case of a deceased next friend the motion to appoint a new one may be made *ex parte*: *Daly v. Daly*, 9 L. R. Ir. 383; Dan. Forms, 3rd ed., 34.

1. The plaintiff *A.B.* is under the age of twenty-one years; and the defendant has been served with the writ of summons herein, and has appeared in this action (*as may be the case.*)

2. I knew and was well acquainted with *C.D.*, of (*residence and addition*), the person named as the next friend of the said *A.B.*

3. The said *C.D.* departed this life on the day of , and no other person has been named as next friend of the said plaintiff, by whom he may further prosecute this suit (*Shew means of knowledge*).

(*Court and short title as in No. 2.*)

I, *A.B.*, of (*residence and addition*), consent to be appointed [*if so: and to act, in the place of L.M.*] as guardian *ad litem* of *C.D.*, a defendant in this action.

429
Consent of a person other than the official guardian to act as guardian *ad litem* for a person under disability.

Or, who has been served with notice of the judgment dated, &c., in this action.

Or, of *C.D.*, who has been served with the petition presented by—*or*, order taken out on behalf of—*E.F.* in this action—*or*, matter—*or as may be*.

A.B.

Dated, &c.

Witness.

(*Formal parts: see No. 403.*)

on behalf of the defendant *A.B.*, an infant, by *C.D.*, of (*residence and addition*), his next friend, that may be assigned his guardian, by whom he may defend this action.

430
Notice of motion by defendant for a guardian to be assigned him.
(b)

And take notice (&c., *as in No. 403*).

(*Formal parts: see No. 744.*)

1. This action has been brought as I am informed [by my solicitor] and believe claiming damages for (*according*

431
Affidavit in support.

(b) Such a motion will be necessary in an action against an infant for a personal tort: See H. & L. Notes to Rules 154 and 155; or where a guardian other than the Official Guardian, is desired: See Rule 221; or where a guardian other than the Official Guardian has died.

to the fact) against the defendant *A.B.*, who is an infant under the age of 21 years.

2. I have been requested to apply to be appointed guardian *ad litem* of the defendant *A.B.* by (*stating the name and shewing relationship or other interest in the infant*).

3. I have, and to the best of my knowledge, information and belief the said (the person, if other than the infant, at whose request the applicant has made the application) has no interest whatever in the matter in question in this action adverse to the said infant.

(*Formal parts: see No. 744.*)

432

Affidavit in support of motion for appointment of guardian in the place of a deceased guardian.

1. *G.H.*, who, by an order, dated the day of , 19 , was appointed the guardian *ad litem* of the defendant *A.B.* in this action, died on the of , 19 ; and no person has since been appointed to be such guardian.

2. The said *A.B.* is still under the age of twenty-one years.

3. I am the person proposed to be appointed guardian to the said *A.B.*, and I have no interest whatever in the matters in question in this action adverse to the interest therein of the said *A.B.*

4. I have been requested to apply to be appointed guardian of the said defendant *A.B.* by (*stating name and shewing relationship of such person to the infant*), and I say that the said has no interest whatever in the matter in question in this action adverse to the interest of the said defendant *A.B.* therein, to the best of my knowledge and belief.

(*Formal parts: see No. 403.*)

433

Notice of motion for removal of a guardian and appointment of another. (a)

on the part of (the defendant) *A.B.*, an infant, by *C.D.* of (*residence and addition*), is next friend for the purpose of this application, that the Official Guardian [*or E.F.*, the guardian *ad litem* of the said *A.B.*, appointed by an order dated the of , 19], may be removed; and that the said *C.D.*, or some other proper person, may be assigned as guardian in lieu of the said *E.F.* And take notice, that on such motion will be read (*&c., as in No. 403*).

(*Formal parts: see No. 744.*)

I, *G.H.*, of (*Place of business*), gentleman, the solicitor in this cause [*or, matter*] for *A.B.*, make oath and say as follows: **434**
Affidavit in support of motion.

1. The said *A.B.* is [a party respondent named in the petition preferred on the of , 19 , by *D.A.* and others in this cause *or, matter, or, is* a defendant in this cause].

2. The said *A.B.* is under the age of twenty-one years.

3. I have been instructed by the said *A.B.* [*or, by N.B.*, the mother of the said *A.B.*] to apply to this Honourable Court to be assigned the guardian of the said *A.B.*, by whom he may appear upon the said petition.

4. I have no interest in the matters [in the said petition referred to, *or, in question in this action*] adverse to the interest of the said *A.B.*; nor am I acting for any other person or persons having any interest adverse to that of the said *A.B.*

5. Mr. *J.H.* was by an order issued in this cause appointed guardian *ad litem* of the said *A.B.* [*or, the Official Guardian is at present the guardian ad litem of the said A.B.*].

6. *State shortly the reasons why it is sought to remove J.H. [or the Official Guardian], and appoint G.H. (b).*

(*Formal parts: see No. 902.*)

It is ordered that , one of the solicitors of this Court, be and he is hereby appointed guardian to the said infant defendant, by whom he may appear and defend this action. **435**
Order appointing guardian *ad litem*, other than the official guardian.

(*Titles of both actions.*) (*Formal parts: see No. 403.*)

on behalf of the above-named infant plaintiff, by *C.D.*, his next friend in the first [*or, second*] mentioned action [*or, on behalf of the defendant E.F.*], that an inquiry may be made which of these actions it will be most for the benefit of the infant plaintiff to prosecute; and that, in the meantime, all other proceedings in these actions may be stayed. And take notice, that on such motion will be read (*&c., as in No. 403.*) **436**
Notice of motion for an inquiry which of two actions is for an infant plaintiff's benefit.

(b) See Rule 221.

(*Formal parts: see No. 403.*)

437

Notice of motion for dismissal of, or inquiry as to, a single action by an infant.

on behalf of the infant plaintiff, by *C.D.*, of (*residence and addition*), his next friend for the purpose of this application [*or*, on behalf of the defendant *E.F.*], that this action may be dismissed; and that *G.H.*, the next friend of the plaintiff therein, may be ordered to pay to the defendant his costs of and occasioned by this action, and [to the defendant, and the said *C.D.*, their costs] of this application:

[*Or*, that an inquiry may be made whether this action has been properly instituted; and whether it will be fit and proper, and for the benefit of the infant plaintiff, that this action should be further prosecuted; and if so, whether the said *G.H.* is a proper person to be the plaintiff's next friend; and if he is not, that some proper person may be approved as such next friend in his stead.]

And that all other proceedings in this action may be stayed in the meantime. And take notice, that on such motion will be read (*&c., as in No. 403.*).

(*Formal parts: see No. 403.*)

438

Notice of motion to stay proceedings after judgment in like case.

on behalf of the plaintiff, late an infant, but now of full age, that on payment by him to *C.D.*, late his next friend, [and to the defendants], of their costs of this action, all further proceedings therein may be stayed. And take notice, that on such motion will be read (*&c., as in No. 403.*).

(*Formal parts: see No. 403.*)

439

Notice of motion by a co-plaintiff, on coming of age, to strike out his name as plaintiff.

on behalf of the plaintiff *A.B.*, late an infant, but now of full age, that the name of the plaintiff *A.B.* may be struck out, and omitted in all future proceedings in this cause, as a party co-plaintiff thereto. And take notice, that on such motion will be read (*&c., as in No. 403.*).

LUNATICS, AND PERSONS OF WEAK MIND.

(*Formal parts: see No. 403.*)

on the part of the plaintiff, a person of unsound mind not so found, by *A.B.*, of (*residence and addition*), his next friend for the purpose of this application, that *C.D.*, the plaintiff's next friend in this action, may be removed; and that (*Continue as in No. 425, to the end*).

440

Notice of motion for removal of a next friend, and approval of another. (*a*)

(*Formal parts: see No. 403.*)

On behalf of the defendant *A.B.*, a person of unsound mind so found, by *C.D.*, of (*residence and addition*), his next friend for the purpose of this application, that the said *C.D.* or other proper person may be appointed his guardian, by whom he may defend this action: his committee, the defendant *E.F.*, having an adverse interest. (*b*)

441

Notice of motion by a defendant found to be of unsound mind, for a guardian to be assigned him, where his committee is adversely interested.

(*Formal parts: see No. 744.*)

I, *C.D.*, of (*place of business*), gentleman, the solicitor in this cause for the defendant *A.B.*, make oath and say as follows:

442

Affidavit in support of motion. (*a*)

1. The defendant *A.B.* has been served with the writ of summons herein and an appearance on his behalf has been entered.

2. The said *A.B.* has, by proceedings duly taken in that behalf, been found to be a person of unsound mind; and the defendant *E.F.* has been appointed and is now the committee of his estate.

3. The said *E.F.* has an interest in the matters in question in this action adverse to the interest of the defendant *A.B.*

4. I am the person (*Continue as in par. 3 of No. 432*).

(*a*) The practice as to the removal and appointment of next friends of idiots, lunatics, and persons of weak mind, is the same, *mutatis mutandis*, as the practice in the case of infants; and forms 425 *et seq.* can be readily adapted.

(*b*) The proposed guardian must swear that he has no adverse interest; but where he is unable to depose to all or some of the other facts, another deponent can be joined, and the affidavit varied accordingly.

443

Notice of motion by a defendant of unsound mind, not so found, for a guardian to be assigned him. (a)

(Formal parts: see No. 403.)

On behalf of the defendant *A.B.*, a person of unsound mind not so found, by *C.D.*, of (*residence and addition*), his next friend for the purpose of this application, that the said *C.D.*, or other proper person may be appointed his guardian, by whom he may defend this action, and take notice, (&c., as in *Form No. 403*).

444

Affidavit in support of motion.

(Formal parts: see No. 744.)

We, *C.D.*, of (*place of business*), gentleman, the solicitor in this cause for the defendant *A.B.*, and *B.E.*, of (*state place of residence, and add qualification to practise as a medical man*), severally make oath and say as follows:

And first I the said *C.D.* for myself say:

1. The said *A.B.* has been served with the writ of summons herein and an appearance on his behalf has been entered.

2. I am (*continue as in No. 432, par. 3 to the end*).

3. The said *A.B.* has not been found of unsound mind by inquisition, or other proceeding in lunacy (*or as may be*).

Affidavit as to lunacy of defendant.

And I the said *B.E.* for myself say:

5. I have been in actual practice as a physician (*or as may be*) for years last past; and I have for years last past professionally attended the above-named *A.B.* (*or as may be*).

6. I personally examined the said *A.B.* on the day of , 19 , at (*state where*), and on several previous occasions (*or as may be*) for the purpose of ascertaining his state of mind.

7. From such my examination of the said *A.B.*, I am decidedly of opinion that he is of unsound mind, and wholly incapable of the management of himself or his affairs, or of the care of his property; and I have formed such opinion from (*state the grounds, giving specific instances of insanity*).

445

Notice of motion by defendant for appointment of a guardian in lieu of one deceased.

(Formal parts: see No. 403.)

(*Continue as in No. 443, to the end; and add after the word "action": in lieu of B.D., now deceased*).

(a) See H. & L. Rule 217 and notes.

(*Formal parts: see No. 403.*)

We, *C.D.*, of (*describe the deponents, as in No. 444*), **446**
severally make oath and say as follows: Affidavit in
support of
motion.

And first I the said *C.D.* for myself say:

1. *G.H.*, who, by an order in this cause dated the
of , 19 , was appointed the guardian *ad litem* of the
defendant *A.B.*, died on the of , 19 , and no per-
son has since been appointed such guardian.

2. I am (*continue as in No. 432, par. 3, to the end of that Form*).

3. The said *A.B.* has not (*continue as in No. 444, par. 3, to the end of that Form*).

(*Formal parts: see No. 403.*)

On behalf of *A.B.*, a person of unsound mind not so found, **447**
by *C.D.*, of (*residence and addition*), his next friend for the Notice of mo-
purpose of this application, who has been served with the tion by a per-
petition preferred on the of , 19 , by *D.A.* and others son of unsound
in this cause [*or, matter*]: that the said *C.D.* may be ap- mind, not so
pointed the guardian of the said *A.B.*, by whom he may ap- found, for the
pear upon the said petition. And take notice (*as in No. 403*). appointment
of a guardian
to represent
him as respon-
dent to a
petition.

(*Formal parts: see No. 744.*)

We, *C.D.*, of (*place of business*), gentleman, the solicitor **448**
in this cause [*or, matter*] for *A.B.* hereinafter named and Affidavit in
B.E., (*residence and a description of a medical man: see No. 444*), support of mo-
severally make oath and say as follows: tion or
petition.

And first I the said *C.D.* for myself say:

1. The said *A.B.* has been served with a copy of the peti-
tion preferred on the instant [*or, last*], by *D.A.* and
others in this cause [*or, matter*].

2. I am (*continue as in No 432, par. 3, to the end of that Form*).

4. The said *A.B.* has not (*continue as in No. 444, par. 3, to the end of that Form*).

(*Formal parts: see No. 403.*)

449

Notice of motion by plaintiff that a guardian may be appointed to a defendant (a).

on the part of the plaintiff, that a guardian of the defendant *A.B.*, a person of unsound mind not so found may be appointed by whom he may [appear and] defend this action. And take notice, that on such motion will be read (*&c., as in No. 403.*).

450

Affidavit in support.

(*Formal parts: see No. 744.*)

We, *E.E.*, of (*place of business*), gentleman, the solicitor in this cause for the plaintiff [*or as may be*], and *B.E.*, of (*residence and description of a medical man: see No. 444.*), severally (b) make oath and say as follows:

And first I the said *E.F.* for myself say:

1. On the (*prove service of the writ of summons, as in No. 70, et seq. (c).*)

2. On the day of , 19 , I served *C.D.*, of (*residence and addition*), with the notice of motion now shewn to me and marked *A.*, by delivering a true copy of the said notice to, and leaving the same with, the said *C.D.* personally at (*state where*)—*or*, with the wife—*or*, son—*or*, daughter—*or*, servant—(being a grown-up person) of the said *C.D.*, at his dwelling-house situate at (*state where*). (*d.*)

3. The said *C.D.* is the person with whom the defendant resides [*or under whose care the defendant A.B. was at the time of serving such notice*].

4. The said *A.B.* has not been found of unsound mind by inquisition, or other proceeding in lunacy (*or as may be*).

(*Shew means of knowledge.*)

And I the said *B.E.* for myself say:

5. I have been in actual practice as a physician (*or as may be*) for years last past.

6. *Shew that the defendant is of unsound mind, and the deponent's means of knowledge—see No. 444.*

(a) See Con. Rule 218.

(b) Or separate affidavits may be sworn.

(c) Where a defendant has appeared and subsequently become lunatic it is not necessary to prove service of the writ, but the affidavit may be modified accordingly.

(d) As to the time and mode of service of the notice, see Con. Rule 218.

(*Formal parts: see No. 403.*)

On the part of the defendants that all proceedings in this action in which the plaintiff being a person of unsound mind so found, does not sue either by committee of his estate, or by a next friend [*or being a person of unsound mind not so found does not sue by a next friend*] may be stayed.

451

Notice of motion to stay proceedings where a plaintiff being of unsound mind does not sue by his committee, or by a next friend.

SECTION VII.—APPOINTING, OR DISPENSING WITH A REPRESENTATIVE.

(*Formal parts: see No. 403.*)

on behalf of the plaintiff (*or as may be*), that the defendant *A.B.* [*or, A.B. of (residence and addition),*] may be appointed to represent the estate of *C.D.*, deceased [*or, the respective estates of C.D. and E.F., deceased*], in the writ of summons [*or statement of claim*] named (*or as may be*), for the purposes of this action. And take notice, (&c., as in *No. 403*).

452

Notice of motion to appoint a representative.

(*Formal parts: see No. 403.*)

on behalf of the plaintiff (*or as may be*), that this action and the proceedings therein, may be carried on and prosecuted, notwithstanding the absence of any person representing the estate of *A.B.* [*or, the respective estates of A.B. and C.D.*], deceased, in the plaintiff's writ of summons [*or statement of claim*] named (*or as may be*). And take notice (&c., as in *No. 403*).

453

Notice of motion to dispend with a representative (*f*)

(*Formal parts: see No. 403.*)

for an order that may be appointed to represent the heirs at law [*or next of kin*] of *C.D.*, in the statement of claim for the purpose of obtaining the judgment of the Court upon the questions arising upon the construction of the will of the said *C.D.*

454

Notice of motion to appoint a representative of a class, e.g. heirs at law. (*f*)

(e) See Rule 194.

(f) See Rule 201.

(*Formal parts: see No. 403.*)

455

Notice of
motion to
appoint an
administrator
ad litem. (a)

on behalf of the plaintiff (*or as may be*) that A.B., or some other proper person, may be appointed administrator *ad litem* of the estate and effects of [the defendant C.D. or as may be.]

456

Order appoint-
ing an ad-
ministrator *ad*
litem. (b)

Order Appointing an Administrator, ad litem. (Rule 195.)

In the High Court of Justice.

[*Date.*]

(*Name of Judge.*)

Between A.B., Plaintiff.

and

C.D., Defendant.

1. Upon the application of [the plaintiff], and upon reading the affidavits of filed, and upon hearing counsel for

2. It is ordered that , of the , in the County of (*occupation*), be and he is hereby appointed to represent the estate of the late , deceased, for the purposes of this action, and that the administration of the real and personal estate and effects, rights and credits of the said . . . in his lifetime of the of , in the County of , (*occupation*), deceased, who died at , in the County of , aforesaid, on or about the day of , 19 , and who at the time of his death had a fixed place of abode at , be, and the same is hereby granted to the said limited for the purpose only of attending, supplying, substantiating and confirming the proceedings already had or which may hereafter be had in this action; and to obey and carry into execution all orders and directions of the Court relating to this action until judgment shall be entered herein and the same carried into execution, and the execution thereof fully completed, but no further or otherwise, or in any other manner whatsoever.

(*Where security is not required to be given by the person appointed the following clause may be added.*)

3. And it is further ordered that the giving of security by the said administrator for the due fulfilment of his duties as such administrator be and the same is hereby dispensed with.

(a) See Rule 195.

(b) Con. Rules 1897, Form 119. This form it will be noticed contains an order under Rules 194 and 195.

SECTION VIII.—PARTICULARS OF PLEADING, &C.

(Formal parts: see No. 403.)

On the part of the defendant [*or* plaintiff] that the plaintiff [*or* defendant] do within _____ days deliver to the defendant's [*or* plaintiff's] solicitor particulars [*or* further and better particulars] of (*state the materials required*), and that all further proceedings may be stayed until the delivery thereof.

457

Notice of
motion for
particulars
of pleading.
(c)

(Court and style and cause as in No. 457.)

The following are the particulars of the [debt, damages, expense, &c., *as the case may be*] referred to in the [statement of claim].

458

Particulars-

(Set out the particulars as may be most convenient.)

Dated, &c.

Solicitor for

To

's Solicitor.*(Formal parts: see No. 403.)*

On the part of the plaintiff that the defendant *C.D.* may be ordered to deliver a statement containing further and better particulars of the property to which said defendant limits his defence in this action, and that in default, the appearance entered for said defendant herein may be deemed an appearance to defend for the whole property mentioned therein.

459

For better
particulars
of land to
which defence
limited.

Order for Particulars. (Rule 299.)

In the High Court of Justice.

The Master in Chambers (*or as may be*).[*Date.*]

Between _____ Plaintiff,
and _____
Defendant.

460

Order for
particulars.
(d)

1. Upon the application of _____, and upon reading the affidavit of _____, and upon hearing the solicitor [*or counsel*] for _____

(c) See also No. 403.

(d) Con. Rules 1897, Form 114.

[*or* slander] was published [*or* uttered]; [*or* as to the character of the plaintiffs.]

The particulars of the matters as to which the defendant intends to give such evidence are as follows, namely:

1. (*Set out the various matters in separate paragraphs.*)

Dated, &c.

A.B.,
Defendant's Solicitor.

To C.D.,
Plaintiff's Solicitor.

(*Court and style of cause as in No. 462.*)

Take notice that the defendant intends at the trial of this action to give evidence in mitigation of damages that he made [*or* offered] an apology to the plaintiff for the defamation complained of in the statement of claim herein before the commencement of this action [*or* as soon after the commencement of this action as there was opportunity of making (*or* offering) such apology and that this action was commenced before there was an opportunity of making (*or* offering) such apology.]

463

Notice of
intention to
give evidence
of an apology.
(c)

The said apology was made [*or* offered] on the day of _____, 19____, by a letter from the defendant to the plaintiff (*or as may be the case*).

Dated, &c.

A.B.,
Defendant's Solicitor.

To the plaintiff
and to his Solicitor.

SECTION IX.—AMENDMENTS.

(*Formal parts: see No. 403.*)

on the part of the plaintiff [*or* defendant A.B.] that he may be at liberty to amend his writ [*or* statement of claim, *or* defence *or* counterclaim. *Indicate the amendments; either* (d)

464

Notice of mo-
tion to amend.

(c) See R. S. O. 1897, c. 68, s. 4.

(d) Before service of a writ of summons, notice of motion to amend need not be served, but an order to amend must be obtained on an *ex parte* application.

set them out, or refer to the same thus; in the manner shewn in the schedule hereunto annexed].

Without prejudice to injunction: without prejudice to the injunction awarded in this cause. (a).

Without prejudice to a notice of motion for injunction: without prejudice to the motion for an injunction now pending in this cause. (b).

Without the amendment discharging a contempt: without such amendment operating as a discharge of the contempt committed by the defendant *A.B.* in (*as may be*), or rendering it necessary to proceed with the process of contempt *de novo*. And take notice (*as in No. 403*).

(*Formal parts: see No. 744.*)

465

Affidavit in support of motion to amend pleadings.

I, *A.B.* of (*residence and addition*), the above named plaintiff [*or, one of the above-named plaintiffs—or, the next friend in this cause of the above-named plaintiffs, or the defendant A.B., or the solicitor in this cause for the plaintiffs, (or said defendant)*] severally make oath and say as follows:

1. (*State the stage at which the proceedings are.*)
2. I am advised by my solicitor and believe that the statement of claim [*or defence*] in this action should be amended [*if so add, and counsel has settled and approved the draft of the amendments proposed to be made*].
3. Such amendment is not intended for the purpose of delay or vexation; but because the same is considered to be material for my case.
4. *Shew how the amendment is material; and that reasonable diligence has been used in setting it up*).

(a) See *McGregor v. Maud*, 2 Chy. Ch. 387, as to whom notice is necessary to be given.

(b) A motion for an injunction has been held to be abandoned by amending pending the motion under an order of course: *Gouthwaite v. Rippon* 1 Beav. 54; *McDonell v. Street*, 13 Gr. 168; and see *Davy v. Davy*, 2 Chy. Ch. 81.

(*Formal parts: see No. 403.*)

on the part of the plaintiff *A.B.*, that he may be at liberty to amend the proceedings herein by striking out the name of *C.D.* as a co-plaintiff, and making him a defendant; and that the said *C.D.* may be ordered to pay to the plaintiff *A.B.* the costs occasioned by such amendment, and also the costs of giving any security for costs which the defendants or any of them may be held entitled to in consequence of such amendment, and incidental thereto; and also the costs of and incident to this application: to be taxed as between solicitor and client. And take notice (*&c., as in No. 403.*)

466

Notice of motion, by a plaintiff, for leave to amend, by making a defendant of his co-plaintiff refusing to proceed.

Order to amend. (Rules 304, 312, &c.)

In the High Court of Justice.

The Master in Chambers (*or as may be*).

[*Date.*]

Between Plaintiff,
and
Defendant.

1. Upon the application of , and upon reading the affidavit of filed, and upon hearing the solicitor [*or counsel*] for

2. It is ordered that the plaintiff be at liberty to amend the writ of summons in this action by , and that the costs of this application be

See Con. Rules, 1888, Form 130.

See Form, No. 376.

468

Præcipe to amend.

(*Formal parts: see No. 403.*)

on the part of the defendant *A.B.*, that the plaintiff's amended statement of claim may be taken off the files; or that the paragraph thereof numbered [14*a*] may be struck out from such statement of claim, and disallowed, [*or that the amendments*

469

Notice of motion to take amended pleading off the file, or strike out amendments.

(*d*) Con. Rules 1897, Form 112.

(*e*) This application may be made under Rule 301 or to the Judge at the trial: see *McGillivray v. McConkey*, 6 Pr. 56.

to the statement of claim made by the plaintiff after the order herein dated the day of be disallowed and struck out] and that the costs of this application may be paid by the plaintiff, on the ground that (*state grounds upon which the amendment should be disallowed*). And take notice, that on such motion will be read (&c., as in No. 403).

(*Formal parts: see No. 403.*)

470

Notice of motion for payment of defendant's costs of statements in pleading abandoned by amendment.
(a)

on the part of the defendant *A.B.* that the plaintiff may be ordered to pay to the said defendant his costs of this action up to the time of filing the plaintiff's amended statement of claim; or so much of the defendant's costs of the original statement of claim, and of his defence thereto, and of the other proceedings thereon, as have been occasioned by the and paragraphs of the said original statement of claim, and the relief sought with respect thereto [*or, as has been occasioned by the relief sought by the said original statement of claim with respect to (state what)*]; and also the defendant's costs of this application. And take notice, that on such motion will be read (&c., as in No. 403).

(*A modification of this form may be used where the plaintiff moves for costs of proceedings rendered useless by an amendment of a defendant's counterclaim or defence.*)

(*Formal parts: see No. 400 or 403.*)

471

Notice of motion to amend mistake in Master's Report. (b)

on behalf of the for an order to amend the report of the Master [at] made herein on the day of , by (*stating specifically the amendments sought to be made*). And take notice, that in support of such motion, (&c., *continue as in form 400*).

The certificate of the Master usually accompanies, unless the mistake be one that can be corrected by reference to the report itself.

(a) See Rule 301.

(b) Where the mistake is merely a clerical error, or one apparent on the face of the report itself, the motion may be made in Chambers, otherwise the motion should be made in Court.

(Formal parts: see No. 403.)

on behalf of the for an order amending the writ of *feri* Notice of mo-
facias issued, &c., [or, the petition filed herein on the tion to amend
day of (and all proceedings subsequent thereto)] by writs and
(state specifically the proposed amendment). And take notice, other proceed-
that in support of such motion will be read (&c., continue as ings.
in No. 403).

472

Notice of motion to amend writs and other proceedings.

(Formal parts: see No. 400 or 403.)

That the judgment [or order] herein, dated the day of , A.D. 19 , be amended so as to conform to the judgment of the Court (*stating the part of the judgment or order which is erroneous, and the manner in which it should be altered*). Notice of motion to amend judgment to make it conform to the judgment of the Court. (c)

478

Notice of motion to amend judgment to make it conform to the judgment of the Court. (c)

Or, on the part of the _____, that the judgment herein may be amended by correcting a clerical error in the 6th paragraph thereof [e.g., the lands in question being there described as the north half of lot, &c., whereas the said lands are in truth the south half, &c.]

And take notice that, &c.

SECTION X.—ADDING AND STRIKING OUT PARTIES.

(Formal parts: see No. 403.)

on the part of the plaintiff (or as may be the case), that the name of _____ may be added as a plaintiff in this action, [or, that the name of the above named _____, as a plaintiff in this action may be struck out, or that the name of the above named _____ as a plaintiff in this action may be struck out, and the name of _____ may be substituted therefor, or that the name of _____, may be added as a defendant, or that the name of the above named _____ as a defendant to this action may be struck out and that the proceedings herein may be amended accordingly.

474

Notice of motion to strike out.

(Court and style of cause, as in No. 24 or 25.)

I, _____, of _____, consent to be added as sole plaintiff [or as a co-plaintiff, or as next friend of the plaintiff A.B., an infant] in this action.

475

Consent of person proposed to be added or substituted as plaintiff.

(c) See Rule 640.

SECTION XI.—THIRD PARTY PROCEDURE.

476

Affidavit in support of motion by defendant for leave to serve third party.

(*Formal parts: as in No. 744.*)

1. This action is brought against me by the above-named plaintiff for (*stating the nature of the claim*).

2. The statement of claim herein was delivered on the day of , 19 , I have not yet delivered any defence herein.

3. [*State concisely the nature of and facts relating to the claim to contribution or indemnity which the defendant considers himself to have against the third party, for example: By an indenture of bargain and sale, dated the day of , 19 , and made between myself of the first part and X.Y. of the second part, now shewn to me and marked Exhibit "A," the said X.Y. covenanted to pay off the mortgage upon the covenants for payment contained in which this action is brought, and to indemnify me against all liability to the plaintiff in respect to the said mortgage; or, the said bill of exchange sued on herein was accepted by me wholly for the accommodation of X.Y. of, &c., and not otherwise.]*

And I claim to be indemnified by the said X.Y. against the plaintiff's claim herein.

Sworn, &c.

477

Order giving leave to serve third party with notice.

(*Formal parts: see No. 902.*)

It is ordered that the defendant be at liberty to issue a notice claiming contribution [*or indemnity, or other relief, as the case may be, over against the third party*] from [*or against*] as a third party pursuant to the Rules of the Supreme Court of Judicature.

478

Third party notice. (a)

Third Party Notice. (Rule 209.)

In the High Court of Justice.

Notice filed the day of , 19 .
Between A.B., Plaintiff,
and C.D., Defendant.

To Mr. X.Y.

Take notice that this action has been brought by the plaintiff against the defendant [as surety for M.N. upon a bond

conditioned for payment of \$2,000 and interest to the plaintiff.

The defendant *C.D.* claims to be entitled to contribution from you to the extent of one-half of any sum which the plaintiff may recover against him, on the ground that you are his co-surety under the said bond, *or* also surety for the said *M.N.*, in respect of the said matter, under another bond made by you in favour of the said plaintiff, dated the day of , A.D. .]

Or [as acceptor of a bill of exchange for \$500, dated the day of , A.D. , drawn by you upon and accepted by the defendant, *C.D.*, and payable three months after date.

The defendant *C.D.* claims to be indemnified by you against liability under the said bill, on the ground that it was accepted for your accommodation].

Or [To recover damages for a breach of a contract for the sale and delivery to the plaintiff of 1,900 tons of coal.

The defendant *C.D.* claims to be indemnified by you against liability in respect of the said contract, or any breach thereof, on the ground that it was made by him on your behalf and as your agent.]

And take notice that, if you wish to dispute the plaintiff's claim in this action as against the defendant *C.D.*, or your liability to the defendant *C.D.*, you must cause an appearance to be entered for you within eight days after service of this notice.

In default of your so appearing, you will be deemed to admit the validity of any judgment obtained against the defendant *C.D.*, and your own liability to contribute or indemnify (*or otherwise as the case may require*) (*b*) to the extent herein claimed, which may be summarily enforced against you pursuant to the Rules of the Supreme Court.

(Signed) *C.D.*

or

X.Y.,

Solicitor for the defendant, *C.D.*

Appearance to be entered at

Rules 23rd June, 1894, App.

(*b*) The words in brackets are not, but should be in the Form 49 of Con. Rules 1897; and where the relief sought is not contribution or indemnity, but is "other relief over" (see Rule 209), the claim should be stated accordingly.

Indorsement on copy Defence and Counterclaim to be served on Third Party. (Rule 249.)

479

Indorsement
thereon. (a)

To within-named X.Y.

Take notice that if you do not deliver a defence to the within counter-claim of the within-named C.D., within 8 days from the service of this defence and counter-claim upon you, you will be liable to have judgment given against you in your absence.

Defence, if any, is to be filed at

A.B., Solicitor for

Con. Rules, 1888, Form 19.

Entry of Appearance, by Party served with a Third Party Notice. (Rule 210.)

[Title, &c.]

480

Appearance
by third party
(b)

Enter an appearance for to the third party notice
issued in this action on the day of , 19 ,
by the defendant.

Dated the day of , 19 .

(Signed)

(Address)

The said defendant require (c) a statement
of claim to be delivered.

Con. Rules, 1888, Form 96.

(Formal parts: see No. 403.)

481

Notice of motion for directions after appearance by third party.
(d)

On the part of the defendant C.D. for directions as to the time and manner in which the question herein between the said defendant and (the third party) shall be determined in this action.

(a) Con. Rules 1897, Form 50.

(b) Con. Rules 1897, Form 29.

(c) The words to be inserted here are "requires" or "does not require."

(d) See Rule 213.

In the High Court of Justice.

Between

A.B.,

(Date)

and

C.D.,

Plaintiff,

Defendant,

X.Y.,

Third Party.

482
Judgment
against third
party in de-
fault of
appearance.
(e)

The said X.Y., mentioned in the third party notice herein, dated the day of , 19 , not having appeared herein to such notice, and the defendant having satisfied the judgment herein entered against himself on the day of , 19 , and pursuant to the order herein dated the day of , 19 .

It is this day adjudged that the defendant do recover against the said X.Y., the sum of \$.

Judgment signed the day of , 19 .

(Signature of officer.)

(Title, &c., as in No. 482.)

(Formal parts: as in No. 802).

It is this day adjudged that the defendant do recover against the said X.Y., \$ [and the costs incurred by the defendant in defending this action forthwith after taxation thereof, or as may be ordered].

483
Judgment
against third
party after
trial.

For judgment for third party against defendant at the trial, see No. 803.

SECTION XII.—TRANSMISSION OF INTEREST PENDENTE LITE.

Allegations in praecipe for order to continue proceedings.

Assignment.—On the day of , 19 , the [plaintiff] by deed assigned and conveyed all his estate and interest in [the lands and premises] in question in this cause to C.D., who is now entitled to the same.

484
Common
forms of alle-
gations in the
praecipe, for
an order to
continue pro-
ceedings.

(e) See Rule 211.

Lunacy, and appointment of committee.—On the day of _____, 19____, the plaintiff (or as may be) was found lunatic by inquisition (or as may be); and C.D. has been appointed, and is now, the committee of his estate.

Lunacy: Appointment of new committee.—On the day of _____, 19____, E.F. was appointed committee of the estate of the said A.B., in lieu of the said C.D.

Marriage Settlement—Recite marriage of plaintiff, and then proceed as follows:—By an indenture dated the day of _____, 19____, executed on the said marriage, all the share and interest of the plaintiff in the subject matter of this suit has been assigned to E.F. and G.H., upon certain trusts thereby declared and they are now entitled to the same as trustees.

Death.—On the _____ day of _____, 19____, the plaintiff (or as may be) died intestate [and unmarried, or, having first duly made and published his last will and testament.]

After thus reciting the death and will, or intestacy, one of the following allegations may be added:—

Letters of administration.—On the _____ day of _____, 19____, letters of administration of the [real and] personal estate of the said A.B. were granted to C.D.; whereby he became, and is now, the legal [real and] personal representative of the said A.B.

Probate.—The said A.B., by his last will, dated the day of _____, 19____, appointed C.D. and E.F., executors thereof. On the _____ day of _____, 19____, the said will was proved by the said C.D. and E.F.; whereby they became, and are now, the legal [real and] personal representatives of the said A.B.

Devise.—Whereby he devised all his estate and interest in the lands and premises in question in this cause to C.D., who is now solely entitled to the same.

Heirship—Recite death and probate or administration as above, according to the circumstances, and then proceed:—Three years have elapsed from the death of the said plaintiff and no caution has been registered by his executor [or administrator.] or—Three years have elapsed from the registration of the

last caution registered [by the executor of the last will of the said plaintiff, *or* by the administrator of the said plaintiff] and no disposition has been made of the lands in question in this action by the said executor [*or* administrator] and the same are now vested in *A.B.* as heir at law of the said plaintiff (*if so* subject to the dower of *C.D.* his widow therein).

Praecipe Order to continue Proceedings. (Rule 396.)

In the High Court of Justice.

the day of , A.D. 19 .
Between Plaintiff,
and
Defendant.

485
Order to continue proceedings. (a)

1. Upon the application of , alleging that since the in this action, and about the day of A.D. 19 , the above named departed this life, having (*recite facts shewing who are the legal representatives*), who now the legal (*b*) representative of the said ; and further alleging that it is desirable or necessary that this action should be continued at the suit of as part plaintiff thereto against as part defendant thereto.

2. It is therefore ordered that this cause may be continued at the suit of as part plaintiff thereto against as part defendant thereto by order to proceed and that the same and all proceedings therein do stand in the same plight and condition as they were in at the time of the as aforesaid.

A.B., Clerk of the Crown and Pleas,
or Clerk of Records and Writs,
(*or as may be*).

*Indorsement on Order Adding or Changing Parties.
(Rule 399.)*

Take notice that if you desire to discharge this order you must apply to the Court for that purpose within 14 days after

486

Indorsement to be made thereon. (c)

(a) Con. Rules 1897, Form 97.

(b) Here may be inserted "real and personal" or "personal" as the case may require.

(c) Con. Rules 1897, Form 51.

the service hereof upon you. The statement of claim in this action is filed in the office of the at [and if the service is after a judgment directing a reference to a Master or other officer, add and the reference under the judgment in this cause is being prosecuted in the office of the at].

(Signed) A. B.,

Plaintiff's Solicitor.

To

(the parties to be served with the order.)

Con. Rules, 1888, Form 20.

(Formal parts: see No. 403.)

487

Notice of motion, by representatives of deceased defendant, to dismiss action unless continued against them. (a)

on the part of A.B., of (residence and addition), and C.D., of, &c., the legal [real and] personal representatives of the late defendant E.F., now deceased, that the plaintiff may be ordered, within one month, to obtain and serve on them an order to proceed with this action; or, in default thereof, that this action may be dismissed [If there are surviving defendants, add: as against the said A.B. and C.D.] for want of prosecution.— And take notice (&c., as in No. 403).

(Formal parts: see No. 403.)

488

Notice of motion, by defendant, to dismiss action unless prosecuted by assignee of sole plaintiff.

on the part of the defendant A.B., that C.D. and E.F., the assignees [or, that C.D., the assignee for the benefit of creditors or, creditors' assignee] of the estate and effects of the above-named plaintiff, may be ordered within [one month] to take proper proceedings in this action, for the purpose of prosecuting the same against the said defendant; or, in default thereof, [if before judgment: that this action may stand dismissed, or if there are other defendants, add: as against the said defendant A.B., without costs] without further order.

[Or, if after judgment, that all further proceedings in this action may be stayed.]

or for security for costs. (b)

(a) In case of a sole defendant dying, it would seem this motion can only be made by his representatives, where the death takes place after judgment: Smiths' Pr., 6th ed. 373; 7th ed., 547. If a sole defendant die before judgment, it would seem that his representatives are without remedy: *Reeves v. Baker* 13 Beav. 115.

(b) See H. & L. notes to Rule 1198.

[*Or, that: the plaintiff who is insolvent and has assigned all his interest in the property in question in this action, do within weeks give security to the applicant for his costs of this action, and that in the meantime all further proceedings in this action—If there are other defendants, add: as against the said defendant—may be stayed.*] And take notice (&c., as in No. 403).

(*Formal parts: see No. 403.*)

on the part of the defendant *A.B.*, that *C.D.* and *E.F.*, the legal [real and] personal representatives (*or as may be*) of the late plaintiff *G.H.*, now deceased, may be ordered, within [one month], to obtain and serve on the said defendant an order to proceed with this action; or, in default thereof, that this action may be dismissed without costs—[*If there are other defendants, add: as against the said defendant A.B.*—for want of prosecution. And take notice (&c., as in No. 403).

(*Formal parts: see No. 403.*)

on the part of the defendant *A.B.*, that the plaintiff *C.D.* (*surviving plaintiff*) may be ordered, within (*continue as in last form, to the end, and add*): with costs to be paid by the said plaintiff *C.D.* to the said defendant. And take notice (&c., as in No. 403).

SECTION XIII.—EXAMINATION OF PARTIES FOR DISCOVERY.

(*Court, and shortened or short style of cause as in No. 25, or No. 26.*)

Upon the application of the [plaintiff] I hereby appoint day the day of , 19 , at my chambers [*or office*] in the Court House [*or* No. Street, Toronto, *or as may be*], at the hour of o'clock in the noon, for the examination of the [defendant] *viva voce* upon oath before me touching his knowledge of the matters in question in this action, pursuant to the Consolidated Rules in that behalf.

489

Notice of motion, by defendant, to dismiss action unless prosecuted by representatives of deceased sole plaintiff. (c)

490

The like, unless prosecuted by surviving co-plaintiff. (c)

491

Appointment by examiner.

492*(Shortened style of cause: see No. 25.)*

Notice to produce on examination. (a)

Take notice, you are hereby required to produce at your examination herein all letter books, books of account, receipts, invoices, letters (*as may be necessary*), and other documents in any way relating to the matters in question in this action.

Yours, &c.,

Solicitor.

To the
and to

his Solicitor. }

493*(Shortened style of cause: see No. 25.)*

Commencement of depositions taken on examination for discovery.

Examination of the _____ for discovery pursuant to the Consolidated Rules of the Supreme Court taken on oath before me _____ Special Examiner, [*or* by _____, Stenographer, approved and duly sworn by me] Special Examiner [*as the case may be*] at _____, the _____ day of _____, 19 _____.

494

Certificate on copies.

Certified to be a true copy.

(Signature.)

Special Examiner [*or* Stenographer,]
(*or as the case may be*) (b).

495*(Court and style of cause.)*

Certificate of examiner as to non-attendance of party.

I certify that an appointment was issued by me for the _____ day of _____, 19 _____, to take the examination of the [defendant] in this action for discovery, and that the [defendant] did not attend on the said day to be examined [*or that the* _____ attended before me on said day, but refused to be sworn and examined, *or* refused to produce specifying the document].

Dated this _____ day of _____, 19 _____.

(Signature)

Examiner.

(a) To accompany an appointment for examination for discovery or to be indorsed thereon.

(b) Where the examiner is not also the stenographer or person actually taking the depositions, the copies must be signed by the examiner as well as certified by the stenographer: Rule 458 (2).

(*Formal parts: see No. 403.*)

on the part of the defendant that this action may be dismissed with costs, on the ground that the plaintiff has failed to attend to be examined pursuant to the appointment of _____, Esq., a Special Examiner of this Honourable Court, under the subpoena served upon him herein, [*or on the ground of his refusal to be sworn, or to answer lawful questions put to him on his examination for discovery herein*], and take notice that in support of such motion will be read (*&c., as in No. 403*).

496

Notice of motion to dismiss under Rules 454 or 473, for refusal to attend to be examined, etc.

(*The certificate of the proper officer proving default, and affidavit of service of order to produce, or of appointment and subpoena for examination, accompany.*)

(*Formal parts: see No. 403.*)

on behalf of the plaintiff, for an order that the defence of the defendant, A.B., may be struck out [and the plaintiff be at liberty to set down this action on motion for judgment for default of pleading, *or to sign judgment for default of pleading*], on the ground that the said defendant has failed to attend to be examined pursuant to the appointment of _____, Esq., a Special Examiner of this Honourable Court, served upon him herein. And take notice, that in support of such motion will be read (*&c., as in No. 403*).

497

Notice of motion for an order striking out defence for defendant's non-production or non-attendance to be examined.

(*Formal parts: as in No. 902.*)

1. It is ordered that the plaintiff [*or defendant*] do attend at his own expense at the _____ of _____ in the County of _____, before _____, at such time and place as he may appoint, for examination *viva voce* upon oath touching his knowledge of the matters relating to this action pursuant to the Rules of Court in that behalf; and in default that this action be dismissed with costs [*or that the defence of the said defendant be struck out*].

498

Order on above motion.

[2. *Where necessary*, And it is further ordered that the _____ solicitor do give the _____ solicitor _____ days' notice of the time and place of such examination.]

3. And it is further ordered that the costs of this application be _____

(*Formal parts: as in No. 403.*)

499

Notice of motion to commit for non-attendance for examination or refusal to be sworn, or to answer questions.

on behalf of the plaintiff [*or defendant*] for an order for an attachment to commit the defendant [*or plaintiff*] to the common gaol of the County or United Counties in which he may be found for contempt in refusing or neglecting to attend for examination for discovery herein at the time and place appointed therefor [*or refusing to be sworn or refusing to answer lawful questions put to him, or refusing to answer the questions hereinafter (or in the affidavits and papers filed on this application) mentioned on the appointment for his examination herein for discovery*].

500

(*Formal parts: see No. 902.*)

Order thereon

and it appearing that he has been guilty of a contempt of Court in refusing or neglecting to attend, &c. (*or as the case may be*). It is ordered that the sheriff of the City, County or United Counties, in which the said may be found do take the said into his custody and commit him to the gaol of his County or United Counties for the said contempt, and that a writ or writs of attachment do issue accordingly.

501

(*Formal parts: see No. 403.*)

Notice of motion for medical examination of plaintiff in railway accident case.
(a)

for an order that the plaintiff may be medically examined by , the defendants' medical adviser, or some other duly qualified medical practitioner with regard to his alleged personal injuries complained of in this action.

502

(*Formal parts: see No. 402.*)

Order thereon.
(a)

It is ordered that the plaintiff be medically examined with regard to the personal injuries alleged to have been sustained by him, for which this action is brought, by , the defendants' medical adviser in the presence of , the medical adviser of the plaintiff, at .

And it is further ordered that the defendants' solicitors do give to the plaintiff's solicitors hours' notice of the time for such examination.

SECTION XIV.—PRODUCTION AND INSPECTION OF DOCUMENTS.

Praecipe Order for Production. (Rule 464.)

In the High Court of Justice.

the day of A.D.
Between Plaintiff,
and Defendant.

503
Order to produce. (b)

1. Upon the application of

2. It is ordered that the do, within ten days after the service of this order on him or his solicitor make discovery on oath of the documents which are or have been in his possession or power relating to any matters in question in this action, and do produce the same to and deposit the same in the Central Office at Osgoode Hall, Toronto [*or with the Deputy Clerk of the Crown, Deputy or Local Registrar of this Court at (as the case may require)*] for the usual purposes.

(Signed) A.B., Clerk of the C. and P.
or Clerk of R. and W.
or Dep. Clerk or Dep. Registrar.
or Local Registrar.

Affidavit as to Documents (Rule 467.)

In the High Court of Justice

Between—A.B., Plaintiff,
and
C.D., Defendant.

504
Affidavit on production. (c)

I, the above-named defendant C.D., make oath and say as follows:—

1. I have in my possession or power the documents relating to the matters in question in this action set forth in the first and second part of the first schedule hereto.

2. I object to produce the said documents set forth in the second part of the said first schedule hereto.

3. [*Here state upon what grounds the objection is made, and verify the facts as far as may be.*] (d)

(b) Con. Rule 1897, Form 96.

(c) Con. Rules 1897, Form 19.

(d) See Forms Nos. 506 to 515.

4. I have had, but have not now, in my possession or power the documents relating to the matters in question in this action set forth in the second schedule hereto.

5. The last mentioned documents were last in my possession or power on [*state when.*]

6. [*Here state what has become of the last mentioned documents, and in whose possession they now are.*]

7. According to the best of my knowledge, information and belief, I have not now, and never had in my possession, custody or power, or in the possession, custody or power of my solicitors or agents, solicitor or agent, or in the possession, custody or power of any other persons or person on my behalf, any deed, account, books of account, voucher, receipt, letter, memorandum, paper, or writing, or any copy of or extract from any such document, or any other document whatsoever, relating to the matters in question in this action or any of them, or wherein any entry has been made relative to such matters, or any of them, other than and except the documents set forth in the said first and second schedules hereto, and the pleadings and other proceedings in this action.

Sworn, &c.

Con. Rules, 1888, Form 48.

Affidavit on Production when made by an Officer of a Corporation. (Rule 468).

505

In the High Court of Justice.

Between—*A.B.*, Plaintiff,
and

C.D., Defendant.

The same by
an officer of a
corporation.
(a)

I, of , make oath and say as follows:—

1. I am the (*here state the name of the office held by the deponent in the service of the company on whose behalf he makes the affidavit*), and as such, have knowledge of all documents which are, or have been, in the custody or possession of the said (*company*), relating to the matters in question in this action.

2. I am cognizant of the matters in question in this action.

3. The said defendants have in their possession or power, the documents relating to the matters in question in this action, set forth in the first and second parts of the first schedule hereto.

4. The said defendants object to produce the said documents set forth in the second part of the said first schedule hereto.

5. [*Here state on what grounds the objection is made, and verify the facts as far as may be. (b)*]

6. The said defendants have had, but have not now, in their possession or power, the documents relating to the matters in question in this action, set forth in the second schedule hereto.

7. The last mentioned documents were last in the possession or power of the said defendants on (*state when*).

8. [*Here state what has become of the last mentioned documents, and in whose possession they now are.*]

9. According to the best of my knowledge, information and belief, the said defendants have not now, and never had, in their possession, custody, or power, or in the possession, custody, or power of myself or of any of their solicitors or agents, or of any person or persons whomsoever, on their behalf any (*proceed as in last form*).

Sworn, &c.

Con. Rules, 1888, Form 49.

Grounds of Objection to Production (d).

The last mentioned documents, to the best of my knowledge, information and belief, may tend to criminate me and subject me to a criminal prosecution [*or to prosecution for a penalty*].

506

Documents
tending to
criminate.

The last mentioned documents have been acquired and are held by me in my capacity of (*state the official or other position*) and not otherwise, and the attention of the Minister (*as the case may be*), subject to whose control I am as such, having been called to the nature and contents of the said documents, he has by letter now produced and shewn to me and marked exhibit "A" hereto, directed me not to produce the said documents and to object to the production thereof in

507

Documents
privileged on
public
grounds.

(b) See Nos. 506 *et seq.*

(d) For insertion as clause 3 in Form 504, and as clause 5 in Form 505.

this action except under the order of this Honourable Court, on the ground of the public interest which, in his opinion, would be injured by their production.

508

Documents relating to the party's own case.

To the best of my knowledge, information and belief, the last mentioned documents relate solely to my own case and not to the case of the plaintiff [*or defendant*], and do not in any way tend to support or prove his case or to impeach my own.

509

Documents not in the party's sole possession or power.

The last mentioned documents are not in my sole possession or power, but only in my possession or power jointly with A.B. as my co-partner in the firm of A.B. & Co. of (*or as the case may be*).

510

Documents held as agent.

The last mentioned documents are in my possession or power only as solicitor for A.B. (*or as the case may be*), and I hold the said documents only on behalf of the said A.B. and not otherwise.

511

Privileged communications with professional legal advisers.

The last named documents consist solely of professional communications of a confidential nature, which, for the purpose of my obtaining legal advice, have passed [between me and my solicitors, Messrs. (and their Toronto agents, Messrs.), and counsel advising on my behalf, *or* between my business manager under my instructions and on my behalf, and my solicitors, &c., *as the case may be*].

512

Documents prepared at a party's instance and for the purpose of being laid before solicitors or counsel to obtain legal advice.

The last mentioned documents were prepared for me by A.B., my business manager (*or as the case may be*), acting at my request after the commencement of this action [*or shortly before the commencement of this action, and in view thereof and whilst such action was contemplated*], merely for the purpose and with the intention of the same being laid before my solicitors confidentially and in their professional capacity in order to obtain their legal advice and to enable them properly to conduct [*or defend*] this action on my behalf.

513

The last named documents consist solely of confidential communications which since the commencement of this action [or in view of this action whilst it was contemplated or threatened or anticipated], have passed between my solicitors and third persons [or consist solely of confidential communications which since the commencement of this action (or in view of this action and whilst the same was contemplated, or threatened, or anticipated), have passed between myself at the instance and request of Messrs. , my solicitors and third persons] merely for the purpose of obtaining or furnishing information or materials to be used as evidence on my behalf in this action, or to enable such evidence to be obtained, and to enable my solicitors to conduct [or defend] this action on my behalf, and to advise me with reference thereto.

Communications for the purpose of obtaining evidence in the action.

514

The last mentioned documents were prepared by my solicitors [or counsel] confidentially, and in their professional capacity after the commencement of a former [or another] action in this Court, wherein, &c. (*describe the parties*), as the case may be, or in view of such action and for confidential use between my solicitors [or counsel] and myself in relation to such action and the conduct thereof.

Documents prepared by solicitors for the purpose of another action and privileged in it.

515

I say that I am a mortgagee, and that a large sum is still due and owing to me, on my mortgage securities; and that the said several deeds, documents, and papers and writings set forth in the second part of the said first schedule form and support my title, and are intended to be used by me in evidence thereof accordingly; and do not contain anything impeaching my case, or tending to support the plaintiffs' title [otherwise than as such title is admitted by me in my defence.] And I submit that, until I have been paid the principal money and interest due on my said mortgage, in the plaintiffs' statement of claim, and hereinbefore mentioned, and the costs of this action, the plaintiffs are not entitled to inspect the said deeds, documents, papers and writings, or any of them, or to have the same or any of them produced for any purpose.

Objection by mortgagee to produce documents. (a)

(a) See *Chichester v. Marquis of Donegal*, 5 L. R. 497; but where mortgagee denies right of mortgagor to redeem, he is bound to produce the mortgage deed: see *Patch v. Ward* 1 L. R. Eq. 436; and when a mortgage is sued on the plaintiff will be required to produce it; H. & L. notes to Rule 467.

(Short style of cause.)

516

Notice of production.

Take notice, that the plaintiff [*or defendant*] has this day filed his affidavit on production of books and papers, and has deposited the documents therein mentioned (*if the fact be so*) in the office of (*as the case may be*). [And take notice, that I require to be served with due notice when you intend to inspect the same.] (*b*)

Dated, &c.

Yours, &c.,

To C.D., Esq.,
Solicitor for

A.B.,
Solicitor for

(Short style of cause.)

517Notice to inspect papers produced. (*a*)

Take notice, that I will attend at the office of (*as the case may be*) on next, at o'clock A.M. [*or P.M.*], to examine the books and papers produced by the defendant [*or plaintiff as the case may be*].

Dated, &c.

Yours, &c.,

To C.D., Esq.,
Solicitor for

A.B.,
Solicitor for

(Formal parts: see No. 403.)

518Notice of motion for better affidavit as to documents. (*b*)

on the part of the plaintiff (*or as may be*), for an order requiring the defendant A.B. (*or as may be*) forthwith to file a further and better affidavit, as to the possession of documents, pursuant to the order dated the day of , 19 ; and that the said defendant (*or as may be*) may be ordered to pay the costs of this application on the ground that the

(*a*) It has been the practice heretofore to allow documents produced to be inspected by the opposite party, and indeed by any party choosing to search the files, without notice to the party producing. When, however, the party producing considers the documents produced of such a character that their inspection by persons other than parties to the suit, or their solicitors, would be a prejudice to him, *semble* he would have a right to insist that the inspection should only be allowed on notice to him, in order that he might have the opportunity of being present at the inspection. Notice to this effect should be given to the officer with whom the documents are left as well as to the opposite party.

(*b*) This motion must be based upon some admission of the party, *e.g.*, in his examination for discovery, that he has documents other than those mentioned in his affidavit on production.

affidavit filed by him on the day of is insufficient
(state shortly wherein it is deemed to be insufficient). And
take notice, (&c., as in No. 403).

(Formal parts: see No. 902.)

and upon reading the order dated the day of , 19 ,
(Order to produce), and the affidavit of the defendant A.B.
(or as may be) filed the day of , 19 ; in pursuance
thereof.

519

Order there-
on, where the
affidavit is
held to be
insufficient.

1. It is ordered that the said defendant A.B. (or as may
be) do file a better affidavit on production within days
after the service of this order and do produce and leave with
the (proper officer) upon oath all deeds, books, papers, writings
and documents in his custody or power relating to the matters
in question in this action, and do effectually comply with the
said order of the day of , 19 .

2. And it is further ordered, that the defendant A.B.
(or as may be) pay to the plaintiff C.D. (or as may be) \$,
for the costs of this application.

Or, the costs of this application: to be taxed.

Or, it is ordered, that the costs of this application be costs
in the cause or costs in the cause to the .

(Formal parts: see No. 403.)

on the part of the plaintiff (or as may be), that the defendant
A.B. (or as may be) may be ordered to produce and leave
with the (proper officer) the several documents mentioned in
his affidavit filed the day of , 19 , and in the second
part of the first schedule thereto (or as may be), and thereby
admitted to be in his possession or power, but which docu-
ments he thereby objects to produce. And that the (appli-
cant), his solicitors and agents may be at liberty to inspect
and peruse the said documents, and take copies and abstracts
thereof and extracts therefrom. And take notice, (&c., as in
No. 403).

520

Notice of mo-
tion to compel
the production
of documents
objected to be
produced.

(*Formal parts: see No. 403.*)

521

Notice of motion for the delivery out of documents deposited in Court, under an order. on the part of the plaintiff (*or as may be*), that [*describe documents; as thus: all the documents — or, the documents mentioned in the schedule hereto*] deposited by him with the _____, pursuant to the order dated the _____ day of _____, 19____, may be delivered out to the applicant. And take notice, (*&c., as in No. 403.*)

522

Receipt on delivery out of deposited documents. Received the documents (*or as they may be described in the order*) mentioned or referred to in the above order.

Dated this _____ day of _____, 19____.

(*Signature of the party to whom the documents are ordered to be delivered.*)

Witness to the signature
of the said A.B.:
C.D. }

(*Formal parts: see No. 403.*)

523

Notice of motion to dismiss action for failure of plaintiff to produce documents. (a) on behalf of the defendant for an order dismissing this action out of this Court with costs, on the ground that the plaintiff has failed to comply with the order for production of documents served upon him herein. And take notice, (*&c., as in No. 525.*)

(*Formal parts: see No. 403.*)

524

Notice of motion to strike out defence for failure of defendant to produce documents. (a) on behalf of the plaintiff for an order that the defendant's defence herein be struck out on the ground that he has failed to comply with the order for production of documents served upon him herein. And take notice (*&c., as in No. 525.*)

(*Formal parts: see No. 403.*)

525

Notice of motion to commit for non-production. (a) on behalf of the [plaintiff], for an order for attachment to commit the [defendant A.B.] to the gaol of the County or United Counties in which the said [defendant] may be found,

(a) See Rule 473.

for contempt, in not producing and leaving with the proper officer in the Central Office [or with the Deputy *or* Local Registrar *or* Deputy Clerk of the Crown at] all books, deeds, papers, writings and documents in his custody or power, relating to the matters in question in this action, and in not filing any affidavit in relation thereto, pursuant to the order for production of documents dated the day of , served upon him in this cause. And take notice, that upon and in support of such motion will be read the said order to produce, and the admission [*or* affidavit] of service thereof, and the certificate of the [Clerk of the Crown and Pleas, *or* Clerk of Records and Writs, *or* Deputy Clerk *or* Deputy *or* Local Registrar at] (*&c.*, as in form No. 403).

(*Formal parts: see No. 902.*)

1. Upon the application of the , and upon hearing read , and it appearing that the has not produced before or left with the the books, deeds, papers, writings and documents in his custody or power, relating to the matters in question in this action, nor filed any affidavit relating thereto, although duly required so to do.

526
Order to com-
mit for non-
production.

2. It is ordered that the Sheriff of the County or United Counties in which the said may be found, do take the said into his custody, and commit to the gaol of his County or United Counties, to answer said contempt. And it is further ordered that a writ or writs of attachment do issue accordingly.

3. And it is further ordered that the do pay to the applicant his costs of this application forthwith after taxation thereof (*or as may be ordered*).

*Notice to Produce Documents referred to in pleadings of
opposite party. (Rule 469.)*

In the High Court of Justice.

Between A.B., Plaintiff,
and
C.D., Defendant.

527
Notice requir-
ing production
of documents
referred to in
a pleading,
&c. (b)

Take notice that the [plaintiff *or* defendant], requires you to produce for his inspection the following documents referred

to in your [statement of claim *or* defence, *or* affidavit dated
the day of , A.D.].

(*Describe documents required.*)

X.Y.,

Solicitor for the

To Z.,

Solicitor for

Con. Rules, 1888, Form 25.

Notice to inspect Documents. (Rule 470.)

528

Notice of time In the High Court of Justice.
for inspection
by party pro-
ducing the
documents. (a)

Between A.B., Plaintiff,
and
C.D., Defendant.

Take notice that you may inspect the documents mention-
ed in your notice of the day of , A.D. [except
the deed numbered in that notice] at my office on
day next the instant, between the hours of 12 noon and 4
o'clock p.m.

Or, that the [plaintiff *or* defendant] objects to giving you
inspection of the documents mentioned in your notice of the
day of , A.D. on the ground (*state the ground*):

Dated, &c.

X.Y.,

Solicitor for the

Con. Rules, 1888, Form 25.

(*Formal parts: see No. 403.*)

529

Notice of mo-
tion to inspect
documents. (b)

for an order that the or his solicitor or agent shall be at
liberty to inspect and take copies of and extracts from the
following documents, namely , referred to in the state-
ment of claim [*or* in the affidavit of sworn herein, *if*
necessary and that all proceedings in the meantime be stayed].
And take notice (&c., as in No. 403).

(a) Con. Rules 1897, Form 61.

(b) May be given where inspection pursuant to Notice 527 is not
granted: Rule 471.

(*Formal parts: see No. 902.*)

530

that the shall be at liberty to inspect and take copies of or
extracts from the following documents, namely, referred
to in (*as the case may be*), and that the do produce the
said documents for such inspection at the office of his soli-
citor in the of between the hours of and
in the noon, on the day of next.

Order there-
on.

[(*If necessary*) 2. It is further ordered that all further
proceedings herein be stayed in the meantime *or*, until the
day of].

SECTION XV.—PAYMENT OF MONEY AND TRANSFER OF
STOCK, &C., INTO OR OUT OF COURT.

531

For praeceipe for direction to bank to receive money, see
No. 390.

Præcipe for
direction to
bank to re-
ceive money.

532

Supreme Court of Judicature
High Court of Justice No. .
[*or Court of Appeal*].

Direction to
bank to re-
ceive money.

— v. —

To the Manager of the Canadian Bank of Commerce:

Receive from the sum of dollars, and
place the same to the credit of this account, under order of
the High Court of Justice [*or Court of Appeal*], dated
day of , 19 .

Toronto day of , 19 .

*Signature of Accountant,
or local officer issuing direction.*

Receipt accompanying the above.

533

Canadian Bank of Commerce,
Toronto day of 19 .

Receipt ac-
companying a
direction.

No.

This is to certify that has this day paid into this
bank to the credit of this account in the High Court of Justice
[*or Court of Appeal*] the sum of dollars.
Order (*date.*)

(*Signature of bank officer.*)

534

Affidavit for
payment to
wife of fund
standing to
wife's separate
account under
Con. Rule 70.
(a)

(*Formal parts: see No. 744.*)

We, *E.F.*, of (*residence and addition*), and *A.B.*, of (*residence and addition*), and *C.*, his wife, severally make oath and say as follows:

I, the said *E.F.*, for myself say:

1. I am the solicitor for the said deponents *A.B.*, and *C.* his wife, and I am well acquainted with the said *A.B.* and *C.* his wife (*or as may be*).

2. We severally say, that the said *C.B.* is the same person as "*C.D.*, an infant," in the order in this cause [*or, matter*] dated the of , 19 , named; and the said *C.B.* is also the same person as "*C.*, daughter of *H.* and *L.D.*" (*or as may be*).

And we the said *A.B.* and *C.*, his wife, for ourselves say:

3. On the of , 19 , we intermarried at church at *W.*, in the County of *Y.*, and we are the same persons *A.B.* and *C.D.*, respectively named in the paper writing now produced and shewn to us, and marked *B.*, and purporting to be a certified copy of an entry in the register book of marriages kept for the said church of at *W.*, for the year 19 , (*or as may be*).

4. No settlement or agreement for a settlement whatsoever was made before or upon, or has been made since our said marriage—*If so:* other than and except the settlement [*or, agreement for a settlement*] now produced and shewn to us, and marked *D.*, and dated the of , 19 .

5. And I, the said *A.B.*, for myself, say that I am willing that the moneys standing in Court to the credit of this cause, to which my said wife is entitled, shall be paid out to her (*b*). [*If there is no settlement, add:*

6. And I, the said *C.B.*, say that the said *E.F.* has explained to me, and I am aware that I am entitled to have the said moneys settled upon me and my children and I do not desire that the said money shall be so settled.

7. And I, the said *E.F.*, for myself, say that I have explained to the said *C.B.*, previously to her swearing to this affidavit, that she is entitled to have the said fund, now in

(a) Where the sum is small and there is no settlement, a solicitor need not join, and an affidavit by the husband and wife in form of paragraphs 2, 3, 4, is all that is necessary.

(b) If the wife desires the fund to be paid to her husband, the affidavit must be altered accordingly.

Court in this cause to which she is entitled, vested in trustees upon the following trusts, viz.: (*state the trusts, see No. 535, par. 3, and continue:*) And I do verily believe the said C.B. fully understood the said explanation and her rights in the premises].

Or, if there is a settlement, or agreement for a settlement, add:

[And I, the said E.F., for myself further say:

8. I have carefully perused the said settlement [*or, agreement for a settlement*] dated the of , 19 , and which is also now produced and shewn to me, and marked D.; and, according to the best of my judgment, the (*describe the funds proposed to be dealt with*) are not, nor is, nor are, any part or parts thereof subject to the trusts of the said settlement [*or, agreement for a settlement*], or in any manner comprised therein, or affected thereby.]

(*Formal parts: see No. 403.*)

on the part of C.B., the wife of A.B., of (*residence and addition*), by E.F., of (*residence and addition*), her next friend for this purpose:

535

Notice of motion for a settlement, by order, of a fund in Court on wife and children.

1. That the costs of this application, as between solicitor and client, may be taxed: or ascertained at Chambers; and may be paid out of the [*describe the fund; as thus: \$, cash, in the bank to the credit of this cause or, matter*]
—*If to special account, add: "The account of C.B., the wife of A.B." (or as may be).*

2. That the residue of the said fund may be carried over to the credit of "The account of the settlement of C., the wife of A.B., and her children," and be invested in Court.

3. That the investments of such residue may be held upon the following trusts, namely [*state the trusts: as thus:*

Upon trust for the said C.B., for her life, and, during any coverture, for her separate use; without power of anticipation;

And after her decease, upon trust for the said A.B., for his life;

And after the decease of the survivor of them, upon trust for all, or any one or more, exclusively of the other or others, of the children of the said C.B. by

the said *A.B.*, or any future husband, as she shall by deed or will appoint; and in default of such appointment, and in so far as no such appointment shall extend, in trust for all the children, or the child, of the said *C.B.*, who being sons or a son shall attain the age of twenty-one years, or, being daughters or a daughter shall attain that age, or marry under that age; and, if more than one, in equal shares.

And in case there shall be no such child who, being a son, shall attain the said age, or, being a daughter, shall attain the said age, or be married, then from and after the decease of the said *C.B.*, in trust for the said *A.B.*, his executors, administrators and assigns.

Or, then in case the said *C.B.* shall die under coverture, in trust for such person or persons as she shall, by her last will, appoint; and in default of such appointment, in trust for the next of kin of the said *C.B.*, according to the statute for the distribution of the estates of intestates, as if she had never been married; but in case she shall survive the said *A.B.*, then in trust for the said *C.B.*, her executors, administrators and assigns.

And that any of the said children who shall take appointed shares shall bring such appointed shares into hotchpot, with their brothers and sisters, taking in default of appointment].

4. That the interest from time to time to accrue, during the life of the said *C.B.*, on the said moneys may be paid to the said *C.B.*, on her separate receipt, until further order.

(*Formal parts: see No. 744.*)

536

Affidavit for payment, &c., to the survivors of personal representatives under an order not naming them. Rule 72.

1. I was well acquainted with *A.B.*, deceased, and he was the person to whom the probate of the will [*or*, letters of administration of the effects] of *C.D.*, deceased, the person named in the order dated the day of , was [*or*, were] granted by the Surrogate Court for the County of (*as the case may be*), on the day of , jointly with *E.F.* and *G.H.*: which probate [*or*, letters of administration], marked X., is [*or*, are] now produced and shewn to me.

2. The said *A.B.* is also the person named in the certificate of burial [*or*, official extract from the register of deaths] hereunto annexed.

(Formal parts: see No. 744.)

537

1. I was well acquainted with *A.B.*, deceased, the person named in the order dated the day of , 19 , as one of the legal personal [*or real and personal*] representatives of *C.D.*, deceased.

The like, under an order naming them. Rule 71.

2. The said *A.B.* is also the person named in the certificate of burial [*or, official extract from the register of deaths*] hereunto annexed.

(Formal parts: see No. 744.)

538

1. I was well acquainted with *A.B.*, deceased, the person named in the order dated, &c., and late of, &c. (*follow description in probate or administration*).

Affidavit for payment, &c. to (surviving) personal representatives, under an order for payment to a person, or his representatives.

2. Probate of the will [*or, letters of administration of the effects*] of the said *A.B.* was [*or, were*] granted by the Surrogate Court for the County of (*or as the case may be*), on the day of , 19 , to *C.D.* and *C.F.*: which probate [*or, letters of administration*], marked X., is [*or, are*] now produced and shewn to me.

3. The said *A.B.* is also the person named in the certificate of burial [*or, official extract from the registry of deaths*] hereunto annexed.

(Formal parts: see No. 744.)

539

1. *A.B.*, in the order made in this cause [*or, matter*] dated the day of , 19 , (*Order under which periodical payment is made*), named [*or, The above named A.B.*], was alive on the day of , 19 : as I know from (*state means of knowledge; as thus: having seen him on the last mentioned day, at (state where).*)

Affidavit of a person being alive; for the Accountant.

2. To the best of my knowledge, information, and belief, the said *A.B.* is also now alive.

(Formal parts: see No. 744.)

540

1. I am the mother of the above named defendant *C.D.* [*or as may be: shewing means of knowledge of deponent.*]

Affidavit that person entitled to a fund in Court has attained full age.

2. The above named defendant *C.D.* was born on the day of , 19 , and is now of the full age of 21 years.

Verification of Return of Moneys paid into C. C. or Surrogate Court. (Rule 1222.)

541

Verification of statement by Clerk of C. C. or Registrar of Surrogate Court. (a)

I hereby solemnly declare that the annexed statement is a full and true statement of the moneys paid into the County [or, Surrogate] Court of the County of , during the year 19 , and that it correctly shews the state of the various accounts therein mentioned upon the thirty-first day of December last.

(Signature) A.B.,
Clerk, or Registrar.

Subscribed and declared before me, at , this day of January, 19 .

C.D.,
Commissioner for taking affidavits,
or Justice of the Peace.

Con. Rules, 1888, Form 217.

SECTION XVI.—STOP ORDERS.

Stop Order. (Rule 82.)

542

Stop order. (b)

In the High Court of Justice.

The Master in Chambers (or as may be)

(Date.)

Between Plaintiff,
and
Defendant.

1. Upon the application of and upon reading the affidavit of filed, and upon hearing the solicitor for [the applicant] and the applicant by his solicitor submitting to be bound by the provisions of Rule 82 of the Consolidated Rules of the Supreme Court of Judicature.

2. It is ordered that any moneys now standing in Court or hereafter to be paid into Court to the credit of this cause [or matter] to which the (*naming the party*) is entitled or which may be directed to be paid to him and any interest accrued or to accrue due thereon be not paid out or otherwise dealt with or disposed of without notice to the said (*applicant*).

(a) Con. Rules 1897, Form 212.

(b) Con. Rules 1897, Form 118.

(*Formal parts: see No. 1324.*)

The humble petition of A.B., of (*residence and addition*), **543**
Petition for a
stop order.

Sheweth as follows:

1—3. *Shew the assignor's interest in the fund in Court:*

4. *Shew the assignment to, or other title of, the assignee; as thus:* By an indenture dated the day of , 19 , and made between the said C.D., of the one part, and your petitioner of the other part, the said C.D., for the consideration therein mentioned, assigned his said one-third share of the said \$10,000 unto your petitioner, his executors, administrators and assigns, absolutely, by way of sale [*or, mortgage*]; and authorized him and them to receive and give discharges for the said share (*or as may be*).

5. *Describe the present state of the fund in Court; as thus:* The said sum of \$10,000 is now standing in Court to the credit of this cause, (*or as may be*).

Your petitioner therefore humbly prays that (*describe the fund or share of fund to be restrained: see No. 544*).

(*Formal parts: see No. 403.*)

on the part of A.B., of (*residence and addition*), that the **544**
Notice of mo-
tion for a stop
order on an
entire fund in
Court.
[*describe the fund to be affected, and how it stands in the Accountant's books, according to his certificate; as thus:* moneys in Court to the credit of this cause, to which C.D. is entitled, *or*, so much of the Dominion Stock, *or as the case may be*], in which the sum of \$ is invested in the name of the Accountant of the Supreme Court to the credit of this cause, and to which [*or, the moneys now invested upon the mortgage of C.D., in the name of the Accountant of the Supreme Court to the credit of this cause, and to which, &c.*]. to which the plaintiff C.D.—*or* defendant C.D.—*or* C.D., of (*residence and addition*) is—if *so*: *or* may be *or* become—entitled, *or* any part thereof, [*If so: and any interest hereafter to accrue due on the said stock, or any part thereof,*] may not be transferred, sold, paid out, *or* otherwise disposed of without notice to the said A.B. And take notice, (*&c., as in No. 403*).

(*Formal parts: see No. 403.*)

545

The like, on a share of a fund in Court.

on the part of *A.B.* (*residence and addition*), that the one-third share to which the plaintiff *C.D.*

Or, defendant *C.D.*—or *C.D.*, of (*residence and addition*)—is [*If so: or may be or become*]*—entitled of the (describe the fund, and cause, &c., as in No. 544), or any part thereof, [If so: and any interest accrued, or hereafter to accrue due on the said [moneys or stock], or any part thereof,] may not be transferred, sold, paid out, or otherwise disposed of without notice to the said A.B. And take notice, (&c., as in No. 403).*

(*Formal parts: see No. 744.*)

546

Affidavit in support of petition or motion.

1. 2. *Shew titles of assignor and assignee: see No. 543, pars. 1.—4.*

3. *Prove assignor's execution of the assignment; as thus: The said indenture is the writing, marked A., now produced and shewn to me. I saw the said C.D. execute the said indenture. The name or signature " ," subscribed to the said indenture as one of the parties executing the same, is of the proper handwriting of the said C.D.: and the name or signature " ," subscribed to the attestation of such signature indorsed on the said indenture, is of my proper handwriting [or, I am well acquainted with the handwriting of the said C.D., having seen him write. The name or signature " ," subscribed to the said indenture as one of the parties executing the same, is of the proper handwriting of the said C.D.]*

4. *In the case of a petition, prove service thereof, when necessary.*

(*Formal parts: see No. 403.*)

547

Notice of motion for a further stop order, on assignment of interest by restraining party.

on the part of *L.M.*, of (*residence and addition*), that the (*describe the fund or share of fund, to be restrained: see No. 544*), may not be transferred, sold, paid out, or otherwise disposed of without notice to the said *L.M.*: instead of *A.B.*, as directed by the order dated the day of , 19 , (*former stop order*). And take notice (*&c., as in No. 403*).

(*Formal parts: see No. 483.*)

on the part of *L.M.*, of (*residence and addition*), that the said *L.M.* may be substituted for *A.B.* in the order dated the day of , 19 , (*former stop order*) named, as the person to whom notice is to be given before any transfer, sale, payment out, or other disposition is made of the moneys [*or stock or as may be*] in the said order mentioned. And take notice, (&c., as in *No. 403*).

548

The like.

(*Title—and address: see No. 1324.*)

The humble petition of *L.M.*, of (*residence and addition*),

549

Petition, for the like order.

Sheweth as follows:

1. *Recite the existing stop order; as thus:* By an order dated the day of , 19 , and made in this cause on the petition [*or, on the application*] of *A.B.*, it was ordered that (*set out so much of the order as imposed the restraint*).

2. *Shew the title of the petitioner; as thus:* By an indenture dated the day of , 19 , and made between the said *A.B.* of the first part, the said *C.D.* of the second part, and your petitioner of the third part, for the consideration therein mentioned, the said *A.B.*, with the privity of the said *C.D.* assigned, and the said *C.D.* assigned and confirmed, the said [one-third share of the said] Dominion per cent. stock [*or moneys in Court*] unto your petitioner, his executors, administrators and assigns, by way of absolute sale [*or, mortgage*]; and thereby authorized him and them to receive and give discharges for the same.

3. The said \$ [Dominion stock] is now standing in the name of the Accountant of the Supreme Court of Judicature for Ontario, to the credit of this cause (*or as may be*).

Your petitioner therefore humbly prays that [the share of the said *C.D.*, of] the said \$ stock [*or as may be*], or any part thereof—*If so:* or any interest accrued or to accrue thereon or any part thereof—may not be [transferred, sold,] paid out, or otherwise disposed of without notice to your petitioner: instead of the said *A.B.*, as directed by the said order

of the day of , 19 , [or, that your petitioner may be substituted for the said *A.B.*, as the person to whom notice is to be given before any [transfer, sale,] payment out, or other disposition is made of the said \$ [stock or as may be]—If so: or the interest accrued or to accrue due thereon].

(*Formal parts: see No. 744.*)

550

Affidavit in
support of mo-
tion.

Shew title of the applicant: see No. 549, pars. 1, 2.

3. *Prove execution by the assigning parties; as thus:* The said indenture dated the day of , 19 , (*assignment*), is the writing marked *B.*, now produced and shewn to me. I saw the said *A.B.* and *C.D.* respectively execute the said indenture marked *B.* The name or signature “ ,” subscribed to the said indenture as one of the parties executing the same, is of the proper handwriting of the said *A.B.* The name or signature “ ,” subscribed to the said indenture as another of the parties executing the same, is of the proper handwriting of the said *C.D.* The name or signature “ ,” subscribed to the attestation indorsed on [*or appended to*] the said indenture of the signatures thereto of the said *A.B.* and *C.D.*, is of my proper handwriting. [*Or, I am well acquainted with the handwriting of the said A.B. and C.D., respectively, having seen them write. The name or signature “ ,” subscribed to the said indenture as one of the parties executing the same, is of the proper handwriting of the said A.B.; and the name or signature “ ,” subscribed to the said indenture as another of the parties executing the same, is of the proper handwriting of the said C.D.*]

Sworn, &c.

(*Formal parts: see No. 403.*)

551

Notice of mo-
tion to dis-
charge a stop
order.

on the part of *C.D.*, in the order dated the day of , 19 , named [*or, C.D., of (residence and addition)*], that the [said] order dated the day of , 19 , whereby it was ordered [*or, that so much of the order dated the day of , 19 , as directs*] that (*recite, concisely, the order, or restraining clause*) may be discharged—*If so: with costs to be paid by the said A.B. to the said C.D. And take notice, (&c. as in No. 403).*

SECTION XVII.—CONSOLIDATION OF ACTIONS.

*(Title of each action sought to be consolidated.)**(Formal parts: see No. 403.)*

on the part of the defendant in each of the above-mentioned actions, that these actions may be consolidated and proceed as one action. And that the plaintiff may be ordered to pay to the defendant his costs of this application to be taxed.

552
Notice of motion to consolidate actions brought against same defendant, in respect of causes of action which might have been included in one action.

*(Style of all the actions.)**(Formal parts: see No. 902.)*

1. It is ordered that all proceedings be and they are hereby stayed in all the above actions other than the action firstly above-mentioned *(or as ordered)*.

553
Order on such a motion.

2. And it is further ordered that the plaintiff be at liberty within days from this date to deliver an amended statement of claim including therein such of the claims in all the above actions as he may be advised *(according to the order made)*.

3. And it is further ordered that the costs of

*(Title of each action sought to be consolidated.)**(Formal parts: see No. 403.)*

On the part of the defendants in the above-mentioned actions, that these actions may be consolidated and proceed as one action, and that the plaintiff may be ordered to pay to the defendants their costs of this application to be taxed.

554
Notice of motion to consolidate actions brought against different defendants on the same contract.

*(Title of each action.)**(Formal parts: see No. 403.)*

On the part of the defendants in all the above-mentioned actions that all further proceedings in the above-mentioned actions of *A. v. C.*, *A. v. D.* and *A. v. E.*, may be stayed until after judgment has been entered in the first above-mentioned action of *A. v. B.*, the defendants in the several other above mentioned actions, submitting to be bound and concluded by the judgment in the said action of *A. v. B.*

555
Notice of motion by defendant to stay proceedings, when several actions brought raising the same question.

(*Title of each action.*)

(*Formal parts: see No. 403.*)

556

Notice of motion by plaintiffs in several actions raising the same question for power to proceed in an action and staying others.

On the part of the plaintiffs in all the above-mentioned actions respectively, that (the plaintiffs in all the above-mentioned actions respectively other than the action of *A. v. B.*, undertaking that the said action of *A. v. B.* shall be treated as a test action, and shall decide their rights in all the other above-mentioned actions respectively as against themselves; and the plaintiff in the said action of *A. v. B.* undertaking that the said action shall be presented with due diligence) the time for delivery of the statement of claim in all the above mentioned actions, except the said action of *A. v. B.* may be enlarged until fourteen days next after judgment shall have been given in the said action of *A. v. B.* on the trial thereof, or until further order, and in support, (&c., as in *No. 403*).

(*Title of each action.*)

(*Formal parts: see No. 403.*)

557

Notice of motion to consolidate several actions for administration before judgment.

On the part of *C.D.*, the defendant in each of the above-mentioned actions [*or, A.B.* the plaintiff in the first (*or, second*) above-mentioned action] that the above-mentioned actions may be consolidated and may henceforth be carried on as if they were one action; and that all necessary and proper directions may be given as to the persons who shall be plaintiffs, and as to the persons who shall be defendants in such consolidated action, and as to the conduct and carriage of such action, and that the costs of all parties of all the above mentioned actions, including the costs of this application, may be costs in such consolidated action, and in support (&c., as in *No. 403*.)

(*Title of each action.*)

(*Formal parts: see No. 403.*)

558

Notice of motion to consolidate several actions of libel. (a)

on behalf of the above-named defendants (*naming the defendants in each of the actions*) for an order that they shall be tried together, or for such other order as may be just.

(a) See R. S. O. 1897, c. 68, s. 14.

SECTION XVIII.—CONFESSION OF DEFENCE.

Confession of Defence arising pending Action. (Rule 295.)

In the High Court of Justice.

Between—A.B., Plaintiff,
and
C.D., Defendant.

The plaintiff confesses the defence stated in the paragraph of the defendant's statement of defence [or, of the defendant's further statement of defence].

Dated, &c.

X.Y.,
Solicitor for Plaintiff.
Con. Rules, 1888, Form 17.

559
Confession of
defence. (b)

Confession of Action for Recovery of Land (Rule 597).

Between—A.B., Plaintiff,
and
C.D., Defendant.

I, the defendant C.D., hereby confess this action [or, confess this action as to part of the land claimed, namely: *describe the part*].

Dated, &c.

C.D.

Witness:

X.Y.,
Solicitor for the defendant, C.D.

560
Confession
(action for re-
covery of
land). (c)

SECTION XIX.—DISCONTINUANCE.

.. *Notice of Discontinuance. (Rule 430.)*

In the High Court of Justice.

Between Plaintiff,
and Defendant.

Take notice, that the plaintiff hereby wholly discontinues this action [or, withdraws so much of his claim in this action as relates to, &c.]

561
Notice of dis-
continuance.
(d).

(b) Con. Rules 1897, Form 54.

(c) Con. Rules 1897, Form 55.

(d) Con. Rules 1897, Form 56.

solicitor by whom the said writ was issued, may be ordered to pay to the said *A.B.* his costs, if any, of this action, and his costs of this application: to be taxed as between solicitor and client. And take notice, that on such motion will be read (&c., as in *No. 403*).

(*Formal parts: see No. 744*).

566

I, *A.B.*, of (*residence and addition*), the above-named plaintiff [*or, one of the above-named plaintiffs*], make oath and say as follows: Affidavit in support of motion.

1. On the _____ of _____, 19____, I for the first time became aware that the writ of summons in this cause had been issued with my name as the plaintiff [*or, one of the plaintiffs*] therein.

2. I am informed and believe that the object of this action is (*state object, shortly*).

3. Neither Mr. *C.D.*, the solicitor by whom, as I am informed and believe, the said writ was issued, nor any person on his behalf, has ever been authorized by me, or by my direction, to issue the same, or to institute or prosecute any other action or proceeding in my name, or on my behalf, relating to the subject matter of this action. I have never consented to or acquiesced in, and I desire to repudiate, this action.

4. *State any communications had with the solicitor who issued the writ, and explain the cause of any delay in applying, since deponent discovered that the action had been instituted.*

(*Formal parts: see No. 403*).

567

On the part of the defendant *A.B.*, that the writ of summons in this action may be taken off the files of this Court or this action dismissed for irregularity; the said writ having been issued without the sanction of His Majesty's Attorney-General for [Ontario] therein named; and that *C.D.*, the person named as the relator in the said writ, may be ordered to pay to the defendant *A.B.* his costs of this action, and of this application. And take notice (&c., as in *No. 403*.) Notice of motion to take writ in the nature of an information off the files or to dismiss action.

568*(Formal parts: see No. 403.)*

Notice of motion, by plaintiff, to dismiss action after appearance without costs.

on the part of the plaintiff, that this action be dismissed as against the defendant [*or*, all the defendants—*or*, the defendants *A.B.*, and *C.D.*], without costs. And take notice, that on such motion will be read (*&c.*, as in No. 403).

569*(Formal parts: see No. 403.)*

Notice of motion, by plaintiff, to dismiss action as to some of the defendants, after appearance, but without prejudice as to others.

on behalf of the plaintiff, that this action may be dismissed as against the defendants *A.B.* and *C.D.*, with costs; but without prejudice to the question how such costs are ultimately to be borne, as between the plaintiff and other defendants. And take notice, that on such motion will be read (*&c.*, as in No. 403.)

570*(Formal parts: see No. 403.)*

Notice of motion to stay proceedings in action brought contrary to an agreement to refer to arbitration.

For an order that all further proceedings in this action be stayed pursuant to section 6 of The Arbitration Act (*a*), and that the plaintiff do pay to defendant his costs of this action and of this application. And take notice (*&c.*, as in No. 403).

571*(Formal parts: see No. 400 or 403.)*

Notice of motion to dismiss action as frivolous and vexatious and an abuse of the process of the Court.

For an order that all further proceedings in this action be stayed on the grounds that the same is frivolous and vexatious and an abuse of the process of this Court, and that the plaintiff do pay to the defendant his costs of this action, including the costs of this application. And take notice (*&c.*, as in No. 403).

572*(Formal parts: as in No. 403.)*

Notice of motion to stay proceedings in an action on a mortgage. (*b*)

For an order ascertaining the amount due to the plaintiff on the mortgage in question for principal, interest and costs herein, and that upon the payment of the same [*where the application is made before judgment that this action be dismissed. Or if the application is made after judgment that all proceedings in this action may be stayed*]. And take notice (*&c.*, as in No. 403).

(*a*) R. S. O. 1897, c. 62.

(*b*) See Rules 388, 389.

(Titles of both suits.)

(Formal parts: see No. 403.)

573

on the part of *A.B.*, the plaintiff in the first mentioned cause [or *C.D.*, the defendant in each of the above mentioned causes—or as may be]:

Notice of motion to stay proceedings in one of two concurrent creditors' suits after a judgment in the other.

1. That all further proceedings in the second mentioned cause may be stayed; and that the costs of *E.F.*, the plaintiff therein, up to the time he had notice of the judgment in the first mentioned cause dated the _____ of _____, 19____, including his costs of this application, may be taxed.

Where assets admitted: 2. That such costs may be paid to the plaintiff *E.F.*, by the defendant *C.D.* (or as may be), out of the assets of *G.H.*, the testator in the pleadings named; and that the plaintiff *E.F.* may be at liberty to go in under the said judgment, and prove his claim, against the assets of the said *G.H.*

Or where assets denied: 2. That the plaintiff *E.F.* may be at liberty to go in under the said judgment, and prove his claim, and the amount of his said costs, against the assets of the said *G.H.*

3. That the costs of the defendant *C.D.* of the second mentioned action, and the costs of the plaintiff *A.B.*, and the defendant *C.D.* (or as may be), of this application may be costs in the first mentioned action.

(Formal parts: see No. 403.)

574

on the part of the defendant *A.B.*, that this action may be dismissed—[if there are other defendants add: as against the said defendant *A.B.*—]for want of prosecution: with costs to be paid by the plaintiff to the said defendant. And take notice (&c., as in No. 403.)

Notice of motion to dismiss action for want of prosecution.

(Formal parts: see No. 403.)

575

on the part of the plaintiff, that the time limited by the order dated the _____ of _____, 19____, for the plaintiff to deliver a statement of claim [serve notice of—or as may be], may be enlarged to the _____ of _____, 19____. And take notice (&c., as in No. 403.)

Notice of motion to enlarge the time given plaintiff for proceeding.

(*Formal parts: see No. 403.*)

576

Notice of motion to dismiss action for non-service of writ within the time limited by the Rules.

on the part of the defendants [*or, of the defendant A.B.*], that this action may be dismissed out of this Court with costs, on the ground that a statement of claim herein has not been delivered to the defendants [*or, the defendant A.B.*] within the time allowed by Rules of Court for that purpose (*a*) [*or that notice of trial of this action has not been given, or the plaintiff has not proceeded to trial herein pursuant to the Rules in that behalf (b), if required, and that the certificate of lis pendens registered against the lands and premises in question herein may be ordered to be vacated and discharged*] (*c*).

And take notice (*&c., as in No. 403*).

(*Formal parts: see No. 744.*)

577

Affidavit in support of motion.

1. I am the defendant in this cause.
2. I have duly appeared in this action on _____, 19____, and required a statement of claim herein to be delivered.
3. No statement of claim herein has been delivered, and the time for delivery thereof expired on the _____ day of _____, 19____ (*d*).

4. A certificate of *lis pendens* has been registered against my lands, which are referred to in the writ of summons herein, and the same is a cloud upon my title.

(*State any circumstance shewing detriment to the defendant by reason of the registration of the lis pendens*) (*e*).

(*If the ground of the motion is the failure to proceed to trial the affidavit must state the facts shewing the default*) (*b*).

(*a*) Rules 243 and 432.

(*b*) Rules 433 and 434.

(*c*) See R. S. O. 1897, c. 51, s. 98.

(*d*) See Rule 243.

(*e*) Where a certificate of *lis pendens* has been registered a motion to vacate it may be made at any stage of the litigation: R. S. O. 1897, c. 51, s. 98.

Order to Dismiss for want of Prosecution. (Rule 432, &c.)

In the High Court of Justice.

The Master in Chambers (*or as may be*).

(*Date.*)

Between Plaintiff,
 and
 Defendant.

1. Upon the application of , and upon reading the affidavit of filed, and upon hearing the solicitor [or counsel] for .

2. It is ordered that this action be and the same is hereby dismissed for want of prosecution, with costs, including the costs of this application, to be paid to the defendant by the plaintiff, forthwith after taxation.

Con. Rules, 1888, Form 135.

(f) Con. Rules 1897, Form 117.

578

Order dismissing action for want of prosecution. (f)

CHAPTER VII.
SPECIAL CASES .....	348

Special Case for the opinion of the Court. (Rules 372-375.)

Special Case.

579
Special case.
(a)

In the High Court of Justice.

Between—A.B., Plaintiff,
and
C.D., Defendant.

The following case is stated for the opinion of the Court under an order of the Honourable Mr. Justice dated the day of 19 , made pursuant to Rule 372 (*or as the case may be. Here state the material facts of the case bearing upon the question of law to be decided.*)

The question [*or questions*] for the opinion of the Court is [*or are*]

First—Whether, &c.

Second—Whether, &c.

(*Signatures.*)

Con. Rules, 1888, Form 90.

Notice of setting down Special Case. (Rules 372-375.)

580
Notice of setting down. (b)
(c)

In the High Court of Justice.

Between—A.B., Plaintiff,
and
C.D., Defendant.

Take notice that have this day set down the special case stated in this action for argument at Osgoode Hall, Toronto [*or, the report, dated day of , 19 ,*

(a) This is the Form given in Con. Rules 1897, Form 15, as the form of a special case stated in an action or proceeding.

(b) Con. Rules 1897, Form 67.

(c) See Rule 375 as to persons under disability.

of Mr. the Referee in this for
 hearing as a special case] on the day of , 19 .

Dated this day of , 19 .

X.Y.,
 Plaintiff's Solicitor,
 (or as the case may be.)

For praecipe to set down, see No. 382.

581

Præcipe to set
 down. (d)

All parties are *sui juris* (d).

C.D., Plaintiff's Solicitor.

_____, 19 .

582

Indorsement
 thereon.

(Formal parts: see No. 403.)

on the part of the plaintiff, that he may be at liberty to set down for hearing the special case filed in this cause. And take notice, (&c., as in No. 403).

583

Notice of set-
 tion to set
 down special
 case, where a
 disability. (e)

An affidavit in support accompanies.

(Formal parts: see No. 400.)

Take notice, that the special case in this cause will be brought on for hearing at Osgoode Hall, on day next, the day of , 19 , at 10 o'clock in the fore-noon, or as soon thereafter as the same can be heard; and take notice, that if you do not attend at the time and place above named, a judgment may be pronounced in your absence.

584

Notice that
 special case
 has been set
 down for hear-
 ing.

(d) See Rule 375 as to persons under disability.

(e) See Rule 375 under which notice would not seem to be always necessary.

CHAPTER VIII.

SPECIAL PROCEEDINGS IN CERTAIN ACTIONS.

SECTION I.—COMPOUNDING PENAL ACTIONS.

585

Notice to Attorney-General where part of penalty goes to the Crown. (a)

In the High Court of Justice.

Between—*A.B.*, who sues as well for the King as for
himself. Plaintiff,

and

C.D., Defendant.

This action is brought for the recovery of penalties to the amount of \$ alleged to have been incurred by the defendant under the Act (*mention it*), and it has been agreed between the plaintiff and the defendant to apply to the High Court of Justice for leave to compound this action upon the defendant's paying the sum of \$ to the Crown and \$ to the plaintiff, together with the costs of this action (*according to the agreement*).

And take notice that a motion will be made before the presiding Judge in Court on , the day of , 19 , at Osgoode Hall, Toronto, at the hour of ten o'clock in the forenoon or so soon thereafter as counsel can be heard, for leave to make the said composition.

Dated, &c.

Yours, &c.,

Plaintiff's or Defendant's Solicitor.

To the Attorney-General of Ontario.

(*Formal parts: as in Nos. 585 and 744.*)

586

Affidavit of plaintiff in support.

1. This action is brought for the recovery of, &c. (*as the case may be, as in the above notice*).

2. (*State the stage at which the action has arrived.*)

(a) See Rule 436.

3. It has been agreed between me and the defendant that an application shall be made to this Court for leave to compound the said action upon (*stating the terms of the arrangement, see notice above*).

4. What is above stated to be the agreement between me and the said defendant respecting the compounding of the said action sets forth fully and truly all the terms upon which it is proposed that this action be compounded.

5. I have not nor has, nor have any other person or persons for my use received any sum or sums of money for or on account of the compounding of the said action, nor is nor are any person or persons by my order or by my appointment, or for my use or for the use of any other person or persons by my knowledge or with my privity or consent at any time or times hereafter, nor am I to have or receive for or on account of the compounding of the said action anything more than the said sum of \$ and the costs as above mentioned.

N.B.—*An affidavit of service of the notice on the Attorney-General should also be made.*

SECTION II.—MORTGAGE ACTIONS—FORECLOSURE, SALE, OR REDEMPTION.

(*For special indorsement on writ of summons: see Nos. 57-59.*)

(*For statement of claim: see No. 292 et seq.*)

(*For Judgments: see Nos. 864 to 876.*)

(*For proceedings in the Master's Office: see Nos. 984 et seq.*)

(*Formal parts: see No. 403.*)

on the part of the defendant *C.D.* for an order:—

1. That all proceedings may be stayed in this action on payment by the defendant *C.D.* to the plaintiff of all arrears [of principal, *if any*, and of interest] now due upon the mortgage in the [writ of summons] mentioned (other than such as have become due by virtue of the acceleration clause in the

587

Notice of motion to stay proceedings on a mortgage or payment of arrears.

mortgage) (a) and costs to be taxed, and for that purpose that an account may be taken of the amount of [principal and] interest now due and in arrear, and that the costs of the plaintiff may be taxed.

And take notice, that in such motion will be read (&c., as in No. 403).

(*Formal parts: see No. 744.*)

588

Affidavit in support.

1. *Verify copy of writ (or statement of claim, if any), and state of cause.*

2. *Shew that the time for payment of the whole principal and interest secured by the mortgage has not elapsed save by reason of the clause accelerating payment for default.*

3. *Shew readiness of applicant to pay arrears.*

(*Formal parts: see No. 403.*)

589

Notice of motion to enlarge the time to redeem, in a foreclosure action.

on the part of the defendant for an order:—

1. That, upon payment by him to the plaintiff of the plaintiff's costs of this application, to be taxed, and upon payment by him to the plaintiff, on or before the day of , 19 , of the sums of \$ and \$, by the Master's report, dated the , 19 , certified to be due to the plaintiff for interest in respect of his mortgage security therein mentioned, and for his costs of this action, the time for the defendant to redeem the lands and premises comprised in the said mortgage may be enlarged for six calendar months.

2. That upon the aforesaid payments being made, subsequent interest may be computed on the principal money due to the plaintiff on his said security, and his subsequent costs of this action be taxed [*If so*, and the account of rents directed by the judgment dated the day of , 19 , be continued]; and the amount due to the plaintiff certified; and a new time and place appointed for the payment thereof to him by the defendant.

3. That, in default of such payment, the defendant may be foreclosed. And take notice, (&c., as in No. 403.)

(a) Whether Court has power to stay proceedings where there is an acceleration clause is not clear: See *Holmsted & Langton*, notes to Rule 388.

(Formal parts: see No. 744.)

1. Shew what efforts have been made by applicant to redeem within the time limited. **590**
Affidavit in support.

2. Shew value of land, and amount of plaintiff's claim.

3. Shew what prospect applicant has of redeeming if the time for redemption be extended.

(Court, and shortened style of cause, see No. 25.)

Take notice that the plaintiff hereby gives you credit for the sum of \$, as a payment on account of the amount found due to the plaintiff by the judgment [or Master's report] herein. [The said sum of \$ being the arrears of rent received by the plaintiff from tenant of the mortgaged premises since the date of the said judgment [or report, or as the case may be.] **591**
Notice of credit. (a)

And further take notice that the plaintiff claims that there remains due to him in respect of his mortgage the sum of \$, which said sum is the amount to be paid by you into the bank at the , between hours of ten o'clock in the forenoon and one o'clock in the afternoon of the day of next, to the joint credit of the plaintiff and the Accountant of the Supreme Court of Judicature, pursuant to the said judgment [or report] instead of the amount mentioned therein.

Dated, &c.

To (defendant).

(Signature.)

Solicitor for the plaintiff.

(Formal parts: see No. 902.)

1. It is ordered that it be referred back to the Master of this Court to take a new account of the amount due to **592**
Order to take a new account and appoint a new day where judgment is for sale. (b)

(a) This may be given before the day fixed by the judgment or report for payment has arrived, where the state of the mortgage account has become changed by receipts by the mortgagee. See Con. Rule 387.

(b) See Rule 387.

the plaintiff [and the subsequent incumbrancers] and to appoint a new day for redemption, one month (a) after the said Master shall have made his report.

2. And it is further ordered that upon the defendant *A.B.* paying to the plaintiff and the said subsequent incumbrancers the amount which may be found due to them, at such time and place as the said Master shall appoint, that they do assign and convey the mortgaged premises, and deliver up all deeds relating thereto to the defendant *A.B.*, or enter up satisfaction upon the roll of their judgments, pursuant to the judgment in that behalf.

3. But in default of the said defendant *A.B.* making such payments as aforesaid, it is ordered that the said mortgaged premises be sold, pursuant to the said judgment.

(Formal parts: see No. 902.)

593

Order to take new account and appoint new day for redemption by subsequent incumbrancers where judgment is for foreclosure.

1. It is ordered that it be referred back to the Master of this Court at _____ to take a new account of the amount due to the plaintiff, and to appoint a new day for redemption, one month (b) after the said Master shall have made his report.

2. And it is ordered that upon the defendants (*the subsequent incumbrancers who have proved claims*) paying to the said plaintiff the amount which may be found due to him at such time and place as the said Master shall appoint, that he do assign and convey the mortgaged premises in the pleadings mentioned, and deliver up all deeds relating thereto, pursuant to the judgment in that behalf.

3. But in default of the said defendants _____ making such payment as aforesaid. It is ordered that they do stand absolutely debarred and foreclosed of and from all right, title and equity of redemption of, in and to the said mortgaged premises as by the said judgment directed (b).

594

Order appointing a new day for payment of mortgage money where no new account taken.

(Formal parts: see No. 902.)

1. Upon the application of the plaintiff, and upon hearing read the report of the Master of this Court at _____, bearing date the _____ day of _____, 19____, &c., and the

(a) See Rule 393.

(b) Where the mortgagor is the party to redeem, as, e.g., where the subsequent incumbrancers have been foreclosed, the order must be altered accordingly.

plaintiff waiving the taking of any subsequent account. It is ordered that the said defendant do pay the sum of , by the said report found due to the plaintiff, into the to the joint credit of the said plaintiff and the Accountant of the Supreme Court of Judicature for Ontario, between the hours of ten o'clock in the forenoon and one o'clock in the afternoon of the day of , instead of the time and place mentioned in the said report.

2. And it is ordered that a copy of this order be served upon the said defendant at least seven days before the said day of .

(Formal parts: as in No. 902.)

1. Upon the application of and upon hearing the solicitor for the said applicant , and upon reading (*the affidavits shewing the change of the state of the account*), and it appearing that (*reciting the receipt of rent or other matter causing the change in the state of the account*).

2. And an account having been taken of the amount due to the for subsequent interest upon the sum of \$ the principal money secured by mortgage in this action since the time appointed for payment by up to the day hereinafter appointed for payment, the same amounts to the sum of \$, which said sum being added to the sum of \$, the amount found due by the , they make together the sum of \$.

3. And upon the paying the said sum of into the of , at its branch or agency office in the of between the hours of ten o'clock in the forenoon, and one o'clock in the afternoon, of the day of to the joint credit of the and the Accountant of the Supreme Court of Judicature for Ontario; It is ordered that the said do assign and convey the land and premises in the pleadings mentioned free and clear of all incumbrances done by , and deliver up all deeds and writings in custody or power relating thereto upon oath to the said , or to whom may appoint.

595

Order taking a new account and appointing a new day for redemption. (c)

4. But in default of the said making such payment as aforesaid, it is ordered that he be absolutely debarred and foreclosed of and from all right, title and equity of redemption of in and to the said mortgaged premises [*or*, that the said mortgaged premises be sold], as by the judgment herein directed.

(*Short style of cause.*)

596

Bank manager's certificate of non-payment, and affidavit proving his signature.

Bank of , the day of , 19 .

I, manager of the said bank at do hereby certify that no sum of money was on the day of , (*date of the judgment or report taking the account*), or since paid into this bank to the joint credit of , and of the Accountant of the Supreme Court of Judicature for Ontario, or to the credit of the said alone, by , or by any one on behalf.

Witness, {

(*Formal parts: see No. 744.*)

597

Affidavit verifying bank manager's certificate.

I, , of , in the County of , make oath and say as follows:

1. I was present and did see , of , Esquire, sign the above certificate, on the day of , 19 , and that the name is of his proper handwriting.

2. The said is the manager of the bank at aforesaid.

3. The name , thereto subscribed as the party witnessing the same, is of my proper handwriting.

(*Formal parts: see No. 744.*)

1. I have not, nor hath, nor have any person or persons by my order or to the best of my knowledge, information and belief, for my use, received the sum of _____, being the amount found due to me by the [report of the Master (at _____) or, the judgment] in this cause, or any part thereof, or any security or satisfaction for the same or for any part thereof, but the whole of the said sum of _____ remains justly due and owing to me under the mortgage security in question in this cause.

598

Affidavit of mortgagee of non-payment of mortgage debt, where mortgagee is not in possession (a)

2. I am not now and since the date of the said mortgage never have been, nor hath, nor have any person or persons by my order, or for my use, been in possession of the lands and premises comprised in the said mortgage, or of any part thereof, nor in receipt of the rents, issues and profits of the same or of any part thereof.

(*Formal parts: see No. 744.*)

1. I have not, nor hath, nor have any person or persons by my order or to the best of my knowledge, information and belief, for my use, received the sum of _____, being the amount found due to me by the [report of the Master (at _____), or, the judgment] in this cause, or any part thereof, or any security or satisfaction for the same, or for any part thereof, but the whole of the said sum of _____ remains justly due and owing to me under the mortgage security in question in this cause.

599

Affidavit of non-payment of mortgage debt by mortgagee in possession.

2. I am in the receipt of the rents and profits of the lands and premises comprised in the said mortgage; but I have not, nor hath, nor have any person or persons by my order, or to the best of my knowledge, information and belief, for my use, received any greater sum in respect of the rents, issues and profits of the said mortgaged premises than the amount

(a) If payments have been received before the day appointed for redemption, notice of credit [See Form No. 591] may be served on the party ordered to redeem a reasonable time before the day appointed for redemption.—See *Rule 387*. If notice of credit be not served, a new account will have to be taken and a new day appointed for redemption. If payments on account be made subsequent to the day appointed for redemption, such payments will not affect the plaintiff's right to a final order, but the affidavit must be varied accordingly.

wherewith I have been charged by the said [Master in and by his said report, *or* judgment.]

Or, I am and have been, prior to and ever since the making of the said [report *or* judgment] in the occupation of the lands and premises comprised in the said mortgage, and [the said Master, in and by his said report, has charged me, *or*, I have been charged by the said judgment] with an occupation rent for the same up to the day appointed for payment.

(Formal parts: see No. 744.)

600

Affidavit of non-payment of mortgage debt by agent where mortgagee is out of the jurisdiction. (a)

The above-named plaintiff is residing at _____, out of the jurisdiction of this Honourable Court, and he has been residing there ever since _____.

2. I am the duly authorized agent of the said plaintiff in this Province, and by power of attorney duly executed by the said plaintiff I am authorized to collect and receive the moneys secured by the mortgage in question in this cause, and the mortgage deed has been ever since _____ and still is in my custody and possession.

3. I have not, nor hath, nor have any person or persons by my order or to the best of my knowledge, information and belief, for my use, nor to the best of my knowledge, information and belief hath the said plaintiff or any person or persons, by his order or for his use, received the sum of _____, being the amount found due to the said plaintiff by the [report of the Master (at _____), *or* judgment] in this cause or any part thereof, or any security or satisfaction for the same or any part thereof, but the whole of the said sum of _____ remains justly due and owing to the said plaintiff under the mortgage security in question in this cause.

4. I am not, and since the date of the said mortgage never have been, nor hath the said plaintiff, nor to the best of my knowledge, information and belief hath or have any person or persons by my, or his order, or for my, or his use, been in possession of the lands and premises comprised in the said mortgage, or of any part thereof, or in receipt of the rents, issues and profits of the same or of any part thereof.

(a) If the mortgagee be in possession, the affidavit must be varied accordingly, see preceding form.

(Formal parts: see No. 902.)

1. Upon the application of the _____, and upon hearing _____ read the judgment [the Master's report], bank manager's certificate and the affidavit of _____ as to the execution thereof and the affidavit of the plaintiff. It is ordered that the defendant _____ do stand absolutely debarred and foreclosed of and from all right, title and equity of redemption of, in and to the mortgaged premises in the writ of summons [or pleadings] mentioned.

602

Final order of foreclosure against original mortgagor.

(Formal parts: see No. 902.)

1. Upon the application of the _____, and upon hearing _____ read _____, It is ordered that the lands and premises in the pleadings mentioned, or a competent part thereof, be sold in pursuance of and in the manner directed by the judgment in this action with the approbation of the Master [in Ordinary] of this Court [at _____].

603

Final order for sale and of foreclosure against parties not proving claims in Master's office.

2. And it is further ordered that the defendants (*subsequent incumbrancers who have not proved claims*) do stand absolutely debarred and foreclosed of and from all right, title, interest and equity of redemption of, in and to the mortgaged premises in the pleadings mentioned.

(Formal parts: see No. 403.)

on behalf of the defendant, for an order vacating the final order of foreclosure obtained by the plaintiff in this cause, dated the _____ day of _____, and extending the time for the defendant to redeem the plaintiff until the _____ day of _____, next, upon such terms as to the Court may seem just; and for taking such further accounts as may be necessary in the premises. And take notice, in support (*&c.*, as in No. 403).

604

Notice of motion to open foreclosure.

(Formal parts: see No. 744.)

1. *Explain any delay which may have arisen in making application.*

605

Affidavit in support.

2. *Shew what efforts were made to redeem before final order obtained, and cause of their being fruitless.*

3. *Shew value of land and amount of plaintiff's debt.*

4. *Shew what prospect the applicant has of being able to redeem in case the further time to redeem be granted.*

SECTION III.—SPECIFIC PERFORMANCE.

*(Formal parts: see No. 744.)***606**

Affidavit of
vendor of non-
payment by
vendee, in suit
for specific
performance,
on motion to
rescind con-
tract.

I have not, nor hath, nor have any person or persons by my order, nor to the best of my knowledge and belief, for my use, received the sum of found due to me by the defendant *C.D.* by the judgment [*or*, Master's report] made in this cause, nor any part thereof, nor any security or satisfaction for the same, but the whole amount thereof remains justly due and owing to me by the said defendant *C.D.*

607

Bank certi-
ficate of non-
payment.

*See No. 596.***608**

Order rescind-
ing contract in
suit for speci-
fic perform-
ance by ven-
dor. (a)

(Formal parts: see No. 902.)

1. It is ordered that the contract in the pleadings mentioned be and the same is hereby rescinded.

2. It is further ordered that all further proceedings in this cause be stayed, save and except such as the plaintiff may be advised to take for the recovery of the costs already ordered to be paid, and the costs of this application.

3. It is further ordered that the defendant do pay to the plaintiff his costs of this application forthwith after taxation thereof.

SECTION IV.—INTERIM ALIMONY.

609

Indorsement
on writ of
summons of
claim for in-
terim ali-
mony, &c. (b)

The plaintiff's claim is for alimony; and the plaintiff demands as interim alimony, until the trial of this action, the monthly [*or weekly*] sum of , to be paid to her on the day of each month [*or week*] at the residence of near the Village of , in the Township of , [*or at the office of the undersigned, her solicitor, No. Street in the of*], and the interim costs to which she is entitled by the practice in that behalf.

(a) See *Watson v. Cox*, L. R. 15 Eq. 219; *Sweet v. Meredith*, 4 Gilt. 207; *Foligno v. Martin*, 16 Beav. 586.

(b) See also Form No. 64.

(Court and style of action as in the writ.)

Take notice that the defendant hereby submits to pay to the plaintiff [the amount claimed by the indorsement on the writ herein for interim alimony as demanded in said indorsement, or the sum of \$ per week payable as mentioned in the indorsement on the writ of summons herein].

Dated this day of A.D. 19 .

(Signature.)

defendant.

or, Solicitor for defendant.

To

Solicitor for the plaintiff.

610

Notice submitting to pay interim alimony. (c)

(Court and style of action.)

Take notice that the plaintiff accepts as sufficient the proposal as to payment of interim alimony contained in your notice herein, dated the day of A.D. 19 .

(Signature.)

To the defendant,

Or defendant's solicitor.

Solicitor for the plaintiff.

611

Notice on plaintiff's part accepting defendant's proposal as to payment of interim alimony.

(Formal parts: see No. 744.)

1. I am the solicitor for the plaintiff herein

2. The writ of summons herein with the demand indorsed thereon for interim alimony is now shewn to me and marked Exhibit A.

3. On the day of 19 , I was, as solicitor for the plaintiff, served with the notice now shewn to me and marked Exhibit B. (d) [where necessary add and in response thereto on the day of A.D. 19 , I caused to be served on the defendant's solicitor the notice now shewn to me and marked Exhibit C.] (e).

4. Default has been made in payment of the interim alimony which became payable on the of 19 , under said notice and the demand for interim alimony indorsed on

612

Affidavit to obtain præcipe order for interim alimony.

(c) See Rule 370.

(d) Notice according to Form No. 610.

(e) Notice Form No. 611.

the said writ of summons and the same has not been paid to me and as I verily believe remains wholly unpaid (a).

Sworn, &c.

613

Order for interim alimony on *proceipe*.

May be framed from No. 616 as may be necessary according to the indorsement No. 609, or Notice No. 610, after default has been made in payment (b).

614

Notice of motion for payment of interim alimony.

(*Formal parts: see No. 403.*)

on behalf of the plaintiff, for an order requiring the defendant to pay to the plaintiff the sum of \$ per week for interim alimony, from the date of the service of the writ of summons upon the defendant until the trial of this action, and also her interim disbursements up to and inclusive of her disbursements for the said order. And take notice (&c., as in No. 403).

615

Affidavit in support proving marriage where the same is not admitted by the defendant.

(*Formal parts: see No. 744.*)

1. I am the plaintiff in this cause.

2. On the day of , 19 , I was married to the defendant A.B. [according to the rites and ceremonies of the Church of Rome, at Saint Paul's Church, in the Town of , by C.D., a priest of the said church], or [by A.B., minister of the Society, duly authorized by law as I verily believe to celebrate marriage (*or as may be*)].

3. That the paper now produced to me and marked with the letter A is a certificate of my said marriage.

Proof of the defendant's means and the nature and value of his property should also be produced.

(Where the motion becomes necessary because a notice according to No. 609 has been served, but the plaintiff does not accept the amount proposed as sufficient, the facts should be shewn and the affidavit may be framed accordingly.)

(a) Where under terms of the demand the alimony was payable at the plaintiff's residence, an affidavit will have to be made by her, and in any case an affidavit as to non-payment to her should also be filed.

(b) See Rule 370.

(Formal parts: see No. 902.)

and the plaintiff undertaking to set this action down and bring the same on for trial at the next sittings of this Court for that purpose at _____, where the trial is to take place.

616

Order for interim alimony on motion.

1. It is ordered that the defendant do forthwith pay to the plaintiff the sum of _____ dollars as and for arrears of interim alimony since the date of the service of the writ of summons upon the said defendant, up to _____.

2. And it is further ordered that the said defendant do on the _____ day of _____ 19____, and on _____ of each succeeding _____ until the trial or other determination of this action, pay to the plaintiff or to whom she may appoint at the _____ the sum of _____ dollars as and for interim alimony, up to the trial of this action and the judgment or other adjudication thereon.

3. But in the event of any of the said days appointed for payment falling upon a Sunday or legal holiday, then the said payments are to become due and payable on the next juridical day.

4. And it is further ordered that the defendant do forthwith pay to the plaintiff the sum of _____ dollars as and for her interim disbursements to date.

SECTION V.—MECHANICS' LIENS.

To (name of owner).

617

Take notice that I have been employed by (name of contractor by whom the person giving the notice was employed) to do work as [a painter on (or to supply materials for)] the building erected [or, now being erected] on [give short description of premises, as, for instance, lot 21, on the north side of Queen Street in the City of Toronto, according to plan 81, registered in the Registry Office of, &c.], and that the said (naming contractor) is indebted to me for such work [and materials, or as may be] in the sum of \$ _____ which is unpaid, and I claim a charge therefor on all moneys due by you to the said (name of contractor).

Form of notice by sub-contractor to "owner" under R.S.O. 1897 c.153, s.11

Dated this _____ day of _____, 19____.

(Signature of sub-contractor giving notice.)

618

Claim of lien
for registra-
tion. R.S.O.
1897 c. 153, s.
17. (a)

A.B. (name of claimant) of (here state residence of claimant), [if so, as assignee of, stating name and residence of assignor] under The Mechanics' and Wage-Earners' Lien Act claims a lien upon the estate of (here state the name and residence of owner of the land upon which the lien is claimed) (b), in the under-mentioned land in respect of the following work [service or materials] that is to say (here give a short description of the nature of the work done or materials furnished and for which the lien is claimed), which work [or service] was [or is to be] done [or materials were furnished] for (here state the name and residence of the person upon whose credit the work is done or materials furnished), (c) on or before the day of

The amount claimed as due [or to become due] is the sum of \$

The following is the description of the land to be charged (here set out a concise description of the land to be charged sufficient for the purpose of registration) (d).

When credit has been given, insert: The said work was done [or materials were furnished] on credit, and the period of credit agreed to expired [or will expire] on the day of
, 19 .

Dated at this day of , A.D. 19 .
(Signature of claimant.)

619

Claim of lien
for wages, for
registration,
under R.S.O.
c. 153, s. 17. (e)

A.B. (name of claimant) of (here state residence of claimant), [if so, as assignee of, stating name and residence of assignor] under The Mechanics' and Wage-Earners' Lien Act

(a) See the Mechanics' Lien Act, R. S. O. (1897) c. 153, s. 17: This is Form 1 in the Act.

(b) For the purpose of avoiding the difficulty which arose in *Makins v. Robinson*, 6 O. R. 1, it might be well to insert here, "and all persons claiming under him subsequently to the (date when lien attached)."

(c) The omission of the particulars referred to in this parenthesis by a sub-contractor was held to be fatal to the validity of the claim; and it was held that the omission might be relied on by the contractor through whom the sub-contractor claimed, so as to relieve him (the contractor) from liability to costs; though not raised by the owner: *Wallis v. Skain*, 21 O. R. 532; but it is possible that this case would not be followed under the present Act: see R. S. O. (1897) c. 153, s. 19.

(d) Where the lien is claimed against the lands of a railway company: see s. 17 (3).

(e) This is Form 2 of the Act.

claims a lien upon the estate of (*here state the name and residence of the owner of land upon which the lien is claimed*), (f) in the under-mentioned land in respect of days' work performed thereon while in the employment of (*here state the name and residence of the person upon whose credit the work was done*) on or before the day of .

The amount claimed as due is the sum of \$.

The following is the description of land to be charged, (*here set out a concise description of the land to be charged sufficient for the purpose of registration*).

Dated at this day of .

(*Signature of claimant.*)

620

The following persons under *The Mechanics' and Wage-Earners' Lien Act* claim a lien upon the estate of (*here state the name and residence of the owner of land upon which the lien is claimed*) (c) in the under-mentioned land in respect of wages for labour performed thereon while in the employment of (*here state name and residence or names and residences, of employers of the several persons claiming the lien*).

Claim of lien for wages by several claimants, under R. S.O.c. 153, s. 18. (g)

A.B. of (*residence*) \$ for days' wages.

C.D. " \$ for days' wages.

E.F. " \$ for days' wages.

The following is the description of the land to be charged (*here set out a concise description of the land to be charged sufficient for the purpose of registration*).

Dated at this of .

(*Signature of the several claimants.*)

621

I, A.B., named in the above [*or annexed*] claim, do make oath that the said claim is true.

Affidavit verifying claim for registration, under R.S.O. c. 153, s. 17. (h)

Or, We, A.B. and C.D., named in the above [*or annexed*] claim, do make oath, and each for himself says that the said claim, so far as relates to him, is true.

(f) See note (b) to Form 618.

(g) This is Form 3 of the Act.

(h) This is Form 4 of the Act.

[Where affidavit made by agent or assignee a clause must be added to the following effect:—I have full knowledge of the facts set forth in the above (or annexed) claim].

Sworn before me (a) at _____, in the
County of _____, this
day of _____, A.D. 19 ____.

Or, the said A.B. and C.D. were sever-
ally sworn before me at _____, in the
County of _____, this _____ day of _____,
A.D. 19 ____.

Or, The said A.B. was sworn before me
at _____, in the County of _____
this _____ day of _____, A.D. 19 ____.

(Title of Court and cause.)

(Formal parts: see No. 123.)

622

Form of state-
ment of claim
in action by
contractor.

The plaintiff, J.E., is a builder, carrying on business in the City of Toronto, in the County of York, and the plaintiff, W.B., is a bricklayer, also carrying on business in the said City of Toronto.

1. On the 11th day of November, 19 ____, the defendant was, and she has ever since remained, and now is, the [owner in fee simple of the lands and or lessee of certain leasehold] premises in the City of Toronto, in the County of York, more particularly described in the claim of lien hereinafter set forth (b).

2. On or about the said 11th day of November, the plaintiffs, who are mechanics, were employed by the said defendant to perform certain work and to furnish certain materials for the erection of a brick hotel upon the said land for the said defendant, and there was no agreement between the said defendant and the plaintiffs that the plaintiffs should not be entitled to a lien upon the said lands and buildings for the price of the said work and materials (c).

(a) As to the persons before whom the affidavit may be sworn: see Holmsted's Mechanics' Lien Acts, p. 101, note (4).

(b) If the lien has not been registered before action, this paragraph should set forth the lands upon which the lien is claimed, and should be modified accordingly.

(c) Rathburn v. Burgess, 17 C. L. J. 111.

3. In pursuance of the said employment, the plaintiffs did do a large amount of work upon and did furnish large quantities of materials, which were used in and about the erection of the said brick hotel upon the said lands, to the value of \$18,000, and completed the same on the 4th day of September, 19 , whereby the defendant became indebted to the plaintiffs for the said work and materials in the said sum of \$18,000.

4. The sum of \$15,000 has been paid on account of the said sum of \$18,000, leaving a balance of \$3,000 still due and payable to the plaintiffs.

5. By reason of being so employed, and doing the said work, and furnishing the said materials, as aforesaid, the plaintiffs became and are entitled to a lien on the estate and interest of the defendant in the said lands for the sum of \$3,000, under the provisions of "*The Mechanics' and Wage-Earners' Lien Act.*"

(If the lien has been registered before action, proceed as follows:)

[6. On the 21st day of September, 18 , the plaintiffs, in pursuance of the said Act, caused to be registered in the Registry Office, in and for the [City of Toronto, or as may be] a claim of lien, which claim is in the words and figures following, that is to say: (d)

"J.E., of the City of Toronto, in the County of York, builder, and W.B., of the same place, bricklayer, under '*The Mechanics' and Wage-Earners' Lien Act,*' claim a lien upon the estate of M.A.T., of the said City of Toronto, in the under-mentioned land, in respect of the following work [and materials], that is to say:

To amount of contract\$17,000

Bill of Extras.

To extra stone in foundation	500
" Brick pointing	200
" Second flats of extra $\frac{1}{4}$ -bricks in thick- ness	300

\$18,000

(d) Where a lien is registered before action, it is necessary that the action should be commenced within ninety days from the day on which the work was completed, or materials or machinery furnished, or the period of credit mentioned in the registered claim expired: see R. S. O. 1897, c. 153, sections 24, 25.

19 .		
Dec. 1.—By cash.....	\$2,000	
Dec. 22.—By cash.....	1,000	
19 .		
Jan. 5.—By cash.....	5,000	
July 6.—By cash.....	7,000	
		<hr/> \$15,000
Balance.....	\$ 3,000	

which work was done [and materials] were furnished for the said *M.A.T.* between the 1st day of May, A.D. 19 , and the 14th day of September, A.D. 19 , the amount claimed as due is the sum of \$3,000; the following is the description of the land to be charged:—All and singular that certain parcel of land known as lot 3, on the west side of John Street, as shewn on the plan of *J. S. Dennis, P.L.S.*, registered in the Registry Office of the said City of Toronto, and numbered D. 63.

“Dated at the City of Toronto, in the County of York, this 21st day of September, A.D. 19 .

“Witness,	}	Signed, <i>J.E.</i> Signed, <i>W.B.</i>
“Signed, <i>J. BARNES</i> ,		

—which statement was verified by an affidavit of the plaintiffs, sworn before a commissioner for taking affidavits in the said County of York, as required by the said statute.”] (a)

[*If the lien has not been registered before action, proceed as follows, omitting the above paragraph 6:*]

in respect of the following work and materials, that is to say, (*set out particulars of claim in manner shewn above in paragraph 6, and proceed*).

(a) A lien for services or wages must be registered before or during the performance of the work or services, or within thirty days after its completion, or the last day's work: see section 22 (3), (4), and a lien for any other work or for materials or machinery must be registered within thirty days from the furnishing, or before or during the performance of the contract, or the furnishing or placing the materials: see section 22 (1), (2), unless the action be commenced, and a certificate of *lis pendens* be registered within thirty days from the completion of the work or delivery of the materials or machinery, in which case registration of the claim before action is unnecessary: see section 23. Where a statement of claim shews that the registered claim was not in proper form, or not registered within the time limited by the Act, the statement of claim was formerly demurrable: *Roberts v. McDonald*, 15 Ont. 80.

6. The work mentioned in the above particulars was completed on (*stating the true date of the completion, which should be within thirty days prior to the issue of the writ : see section 23*), [*or, the said machinery mentioned in the above particulars was supplied [or placed] upon the said lands in the first paragraph hereof mentioned on (stating when the delivery of the machinery was completed, which should be a day within thirty days prior to the issuing of the writ).*]

6a. A certificate of *lis pendens* has been issued in this action, and duly registered in the Registry Office for _____, on the _____ day of _____ (*naming a day within thirty days from the completion of the work, or the delivery or placing of the machinery in respect of which the lien is claimed.* (b)

7. The lands referred to in the first paragraph hereof, [*and particularly described in the said claim of lien hereinbefore set forth*], (c) are the lands occupied by and usually enjoyed with the said hotel.

The plaintiffs claim :

1. Payment to the plaintiffs forthwith of the said sum of \$3,000, together with the interest thereon and the costs of this action.

2. And that in default of such payment, all the estate and interest of the defendant in the said lands and buildings, or a competent part thereof, may be sold, and the proceeds thereof applied in or towards payment of the plaintiffs' debt and the costs of this action, pursuant to the said "*The Mechanics' and Wage Earners' Lien Act.*"

3. For the purposes aforesaid all proper directions to be given and accounts taken.

4. Such further relief as the nature of the case may require.

(*Style of Court and cause.*)

(*Formal parts: see No. 123.*)

1. On the 11th day of November, 19____, the defendant, M.A.T., was and she has ever since remained and now is the [owner in fee simple of the lands and, or lessee of certain

623

Form of statement of claim in action by sub-contractor.

(b) When the action is commenced by filing a statement of claim under R. S. O. 1897, c. 153, s. 31 (2), this allegation will have to be omitted, though it appears to be one that must be proved at the trial.

(c) The words in brackets should be omitted when the lien has not been registered before action.

leasehold] premises in the City of Toronto, in the County of York, (if the plaintiff's lien has been registered, conclude as in preceding form, if not, say) known and described as follows, that is to say: (set out description of land over which lien is claimed).

2. On or about the said 11th day of November, the said defendant, *M.A.T.*, employed the defendant, *C.D.*, to perform certain work and to furnish certain materials for the erection of a house upon the said land for the said defendant, *M.A.T.*, for the price or sum of \$10,000.

3. The defendant, *C.D.*, accepted the said employment, and agreed with the said *M.A.T.*, to perform the said work and to furnish the said materials, and afterwards employed the defendant, *E.T.*, to do part of the said work and furnish part of the materials required for the erection of the said house, for the sum of \$1,000, which employment the defendant, *E.T.*, accepted, and he agreed with the said *C.D.* to do the work and furnish the materials last referred to for the said price or sum of \$1,000.

4. On the 11th day of December, 19 , the defendant, *E.T.*, employed the plaintiff to do part of the work and furnish part of the materials for the erection of the said house which he had so agreed with the said defendant, *C.D.*, to do and furnish as aforesaid, and agreed to pay the plaintiff therefor the price or sum of \$500; and there was no agreement (a) between the plaintiff and the said *M.A.T.*, that the plaintiff should not be entitled to a lien for the work done and materials furnished by him, as hereinafter mentioned.

5. The plaintiff accepted the said employment, and in pursuance thereof the plaintiff did a large amount of work upon, and furnished large quantities of material in and about the erection of, the said house upon the said lands to the value of \$500, and completed the said work and the delivery of the said materials on the 5th day of January, 19 , whereby the defendant, *E.T.*, became indebted to the plaintiffs for the said work and materials in the said sum of \$500.

6. The said work was done, and the said materials were furnished by the plaintiff in accordance with the terms of the contract or agreement between the said defendants, *M.A.T.* and *C.D.*, and there is now due a large sum of money by the said *M.A.T.*, under her contract with the said *C.D.*, which the plaintiff claims equals or exceeds \$.

(a) *Rathburn v. Burgess*, 17 C. L. J. 111.

7. The sum of \$100 has been paid by the said *E.T.* on account of the said sum of \$500, leaving a balance of \$400 still due and payable by him to the plaintiff.

8. By reason of being so employed, and doing the said work and furnishing the said materials as aforesaid, the plaintiff became and is entitled to a lien on the estate and interest of the defendant, *M.A.T.*, in the said lands for the said sum of \$400, under the provisions of the said "*The Mechanics' and Wage Earners' Lien Act.*"

If the lien has not been registered before action, proceed as follows:

9. A certificate of *lis pendens* has been issued in this action and registered in the Registry Office for on the day of (naming the day, which should be within thirty days from the date mentioned in paragraph 5 as the date of the completion of the work, &c.) (b)

[If the lien has been registered before action proceed as in paragraph 6 of preceding Form.]

10. The lands referred to in the first paragraph of this statement of claim [*if so*, and particularly described in the said claim of lien hereinbefore set forth] are the lands occupied by and usually enjoyed with the said house.

11. The defendants, *C.D.* and *E.T.*, have also done work and furnished materials in and about the erection of the said house and are entitled to liens in respect thereof upon the said lands under the said "*The Mechanics' and Wage Earners' Lien Act.*"

The plaintiff claims:

1. Payment by the defendant, *E.T.*, to the plaintiff forthwith of the said sum of \$400, together with interest and the costs of this action.

2. Payment by the defendant, *M.A.T.*, of the same or such part thereof as the plaintiff, by virtue of his said lien and charge as aforesaid, is entitled to receive from the said *M.A.T.*

3. And that in default of such payment by the said *M.A.T.* and the said *E.T.*, that all the estate and interest of the defendant, *M.A.T.*, in the said lands and buildings, or a competent part thereof, may be sold,

(b) Where the action is commenced by filing a statement of claim under R. S. O. 1897 c. 153, s. 31 (2), this allegation will have to be omitted, though it appears to be one that must be proved at the trial.

and the proceeds applied in or towards payment of the plaintiff's debt and the costs of this action, pursuant to the said "*The Mechanics' and Wage Earners' Lien Act.*"

4. For the purposes aforesaid all proper directions to be given and accounts taken.

5. Such further relief as the nature of the case may require.

624

Form of claim
of charge on
15 or 20 per
cent. of price
in respect of
wages lien. (a)

12. The plaintiff is also entitled to a charge upon twenty *per centum* of the value of the work done and materials furnished by the said (*contractor*) for the defendant (*owner*) for wages for thirty days (*or any less period*) in priority to all other liens, and in priority to any claims by the defendant (*owner*) against the defendant (*contractor*) for, or in consequence of, the failure of the latter to complete his contract with the defendant (*owner*).

625

Form of claim
against prior
mortgage. (b)

12. Prior to the commencement of the said work [*or the delivery of the materials or machinery aforesaid*] by indenture bearing date the day of the defendant (*owner, or other mortgagor*) did grant and mortgage the lands and premises aforesaid unto the defendant (*mortgagee*) to secure the payment of the sum of \$, and interest at the rate and at the days and times therein mentioned.

13. By reason of the construction, alteration or repair of the building [*or the erection or placing of the materials or machinery*] upon the lands aforesaid the selling value of the said lands has been increased by the sum of \$, and under the provisions of *The Mechanics' and Wage Earners' Lien Act* the plaintiff and other lien-holders are entitled to a lien upon the said lands for the amount due to them to the extent by which the selling value thereof has been so increased in priority to the said mortgage.

(a) This and the following form are not intended as complete forms, but merely as additional clauses to a statement of claim, claiming a lien. Where the plaintiff's sole claim is the relief referred to in either of Forms 624 or 625 the preliminary part of the statement of claim can be readily adapted from the preceding Forms 622 and 623. See section 14 (1).

(b) See note (a) to Form No. 624. See R. S. O. (1897) c. 153, s. 7 (3).

The plaintiff claims:

1. That the amount by which the selling value of the said lands has been increased by the work done and materials furnished by the plaintiff and other lien-holders (if any) entitled to the benefit of this action may be ascertained under the order and direction of this Honourable Court.

2. That the defendant (*mortgagee*) may be ordered to pay into Court, to the credit of this action, the amount which shall be found due to the plaintiff and other lien-holders entitled to the benefit of this action in respect of their liens, or so much thereof as shall not exceed the amount by which the selling value of the said lands has been increased by the construction [alteration or repair] of the building [or the erection or placing of the materials or machinery] upon the said lands as aforesaid, and that the same when paid into Court may be paid out to the plaintiff and such other lien-holders as are entitled to share therein, subject to the payment of the plaintiff's costs.

3. That in default of the defendant (*mortgagee*) making such payment, the said land may be sold freed from the said mortgage, and that the increased price which may be realized from such sale by reason of the work done and materials furnished as aforesaid may be ascertained, and that the same may be ordered to be applied in payment of the liens of the plaintiff and other lien-holders entitled to the benefit of this action, subject to the payment of the plaintiff's costs.

(*Style of Court and Cause.*) (d).

I, _____, make oath and say, that I have read, or heard read, the foregoing statement of claim (e) and I say that the facts therein set forth are, to the best of my knowledge and belief, true, and the amount claimed to be due to me in respect of my lien is the just and true amount due and owing to me after giving credit for all the sums of money or goods or merchandise to which (*naming the debtor*) is entitled to credit as against me.

626

Affidavit verifying claim in commencing an action, under R.S.O. c. 153, s. 31.
(c)

59 V. c. 35, *Sched., Forms 1-5.*

(e) This is form 5 of the Act.

(d) All actions to enforce mechanics' liens are to be brought in the High Court, no matter what the amount of the plaintiff's claim may be: see R. S. O. (1897) c. 153, s. 31 (1).

(e) See Forms 622-624.

(Style of Court and Cause.)

627

(Date.)

Certificate for
registration,
under R.S.O.
c. 153, ss., 23,
24. (a)

I certify that the above-named plaintiff has commenced an action in the above Court to enforce against the following land (*describing it*) a claim of Mechanics' Lien for \$.

60 V. c. 15, Sched. A. (76).

628

(Style of Court and Cause.)

Form of de-
fence under
R.S.O. c. 153.
. 31. (b)

A.B., disputes that the plaintiff is now entitled to a mechanic's lien on the following grounds: (*Setting forth the grounds shortly.*)

(a) The lien has not been prosecuted in due time as required by statute.

(b) That there is nothing due to the plaintiff.

(c) That the plaintiff's lien has been vacated and discharged.

(d) That there is nothing due by (*the owner*) for the satisfaction of the plaintiff's claim.

Delivered on the day of by *A.B.* in person, whose address for service is (*stating address within two miles of the Court House*), or

Delivered on the day of , by *Y.Z.*, solicitors for the said *A.B.*

NOTE.—If the owner does not dispute the lien entirely and only wishes to have the accounts taken he may use Form No. 629.

(Style of Court and Cause.)

629

Defence where
there are no
matters dis-
puted, or
where the
matters in dis-
pute are mat-
ters of
account,
under R.S.O.
c. 153, s. 31. (c)

A.B. admits that the plaintiff is entitled to a lien and claims that the following is a just and true statement of the account in question:—

-
- (a) This is Form 6 of the Act.
(b) This is Form 7 of the Act.
(c) This is Form 8 of the Act.

Amount of contract price for work contracted to be performed by *E.F.* as plumber on the lands in question herein\$500 00

Amounts paid on Account.

June 1st, 19 , paid *E.F.*\$200 00
 July 1st, 19 , paid *G.H.* and *I.K.*, sub-
 contractors of *E.F.* 100 00
 —————\$300 00

Balance admitted to be due\$200 00

For satisfaction of lien of plaintiff and other lien-holders
 (*as the case may be*) *A.B.*, before action tendered
 to the plaintiff \$ in payment of his claim and now
 brings into Court \$, and submits that that amount is
 sufficient to pay the plaintiff's claim, and asks that this action
 be dismissed as against him with costs.

Delivered, &c.

(*Style of Court and Cause.*)

1. *A.B.*, of , being the owner of the lands in question in this action, make oath and say: That the account set forth in the foregoing defence is a just and true account of the amount of the contract price agreed to be paid by me to *E.F.* for the work contracted to be done by him on the lands in question.

630
 Affidavit of
 owner verify-
 ing account
 under R.S.O.
 c. 153, s. 49.(d)

2. The said account also justly and truly sets forth the payments made by me on account thereof, and the person or persons to whom the same were made; and the balance of [\$200] appearing by such account to be still due and payable is the just and true sum now due and owing by me in respect of my contract with the said *E.F.*

Sworn, &c.

(*Style of Court and Cause.*)

Take notice that this action will be tried at the Court House, in the Town of , in the County of , on the day of by and at such time and place the will proceed to try the action and all

631
 Notice of trial,
 under R.S.O.
 c. 153, s. 36. (e)

(d) This is Form 9 of the Act.

(e) This is Form 10 of the Act.

questions which arise in or which are necessary to be tried to completely dispose of the action and to adjust the rights and liability of the persons appearing before him, or upon whom this notice of trial has been served, and at such trial he will take all accounts, make all inquiries and give all directions and do all things necessary to try and otherwise finally dispose of this action, and of all matters, questions, and accounts arising in said action, and will give all necessary relief to all parties.

And further take notice that if you do not appear at the trial and prove your claim, if any, or prove your defence, if any, to the action, the proceedings will be taken in your absence and you may be deprived of all benefit of the proceedings and your rights disposed of in your absence.

This is a Mechanics' Lien action brought by the above-named plaintiff against the above-named defendants to enforce a Mechanics' Lien against the following lands: (*Set out description of lands*).

This notice is served by, &c.

(*Style of Court and Cause.*)

632

Statement of
account by
lien-holders,
not parties to
the action,
under R.S.O.
c. 153 s. 49. (a)

E.F.

Dr. to G.H.

19 .	
Jan. 1, To 12 doz. brackets	\$12 00
Feb. 3, To 50 lbs. of nails	5 00
Oct. 3, To 60 sheets of glass	40 00
	<hr/>
	\$57 00

Cr.

19 .	
Feb. 4, By cash	\$ 4 00
June 5, By goods	20 00
	<hr/>
	\$24 00
	<hr/>
	\$33 00

(*Style of Court and Cause.*)

633

Affidavit of
lien-holder
verifying
claim under
R.S.O. c. 153,
s. 49. (b)

I, *G.H.*, of (*address and occupation*), make oath and say:
I have in the foregoing account [*or in the account now*

-
- (a) This is Form 11 of the Act.
(b) This is Form 12 of the Act.

shewn to me marked A.] set forth a just and true account of the amount due and owing to me by *E.H.* (*the owner*) [or by *E.F.*, who is a contractor with the defendant, *L.G.* (*the owner*),] of the lands in question, and I have in the said account given credit for all sums in cash or merchandise or otherwise to which the said *E.F.* is justly entitled to credit in respect of the said account and the sum of \$33 appearing by such account to be due to me as the amount (*or balance*) of such account is now justly due and owing to me.

Sworn, &c.

59 V. c. 35, Sched., Forms 6-11.

In the High Court of Justice.

Monday, 10th July, 1896.

Name of Judge or officer.

William Spencer, Plaintiff,

and

Thomas Burns, Defendant.

634
Judgment,
under R.S.O.
c. 153, s. 35. (c)

This action coming on for trial before

in at upon opening of the matter and it appearing that the following persons have been duly served with notice of trial herein, (*set out names of all persons served with notice of trial*) and all such persons (*or as the case may be*) appearing at the trial [*if so*, and the following persons not having appeared *set out names of non-appearing persons*] and upon hearing the evidence adduced and what was alleged by counsel for the plaintiff, and for *C.D.* and *E.F.* and the defendant [*if so*, and by *A.B.* appearing in person].

1. This Court doth declare that the plaintiff and the several persons mentioned in the first schedule hereto are respectively entitled to a lien under *The Mechanics' and Wage Earners' Lien Act*, upon the lands described in the second schedule hereto, for the amounts set opposite their respective names in the 2nd, 3rd and 4th columns of the said 1st schedule, and the persons primarily liable for the said claims respectively are set forth in the 5th column of the said schedule.

2. [And this Court doth further declare that the several persons mentioned in schedule 3 hereto are also entitled to some lien, charge or incumbrance upon the said lands for the

amounts set opposite their respective names in the 4th column of the said schedule 3, *according to the fact (a).*]

3. And this Court doth further order and adjudge that upon the defendant (*A.B., the owner*) paying^g into Court to the credit of this action the sum of *(gross amount of liens in schedules 1 and 3 for which the owner is liable)* on or before the day of next, that the said liens in the said 1st schedule mentioned be and the same are hereby discharged, [and the several persons in the said 3rd schedule are to release and discharge their said claims and assign and convey the said premises to the defendant (*owner*) and deliver up all documents on oath to the said defendant (*owner*) or to whom he may appoint] and the said moneys so paid into Court are to be paid out in payment of the claims of the said lien-holders [*if so, and incumbrancers*].

4. But in case the said defendant (*owner*) shall make default in payment of the said moneys into Court as aforesaid, this Court doth order and adjudge that the said lands be sold with the approbation of the Master of this Court at *(b)* and that the purchase money be paid into Court to the credit of this action, and that all proper parties do join in the conveyances as the said Master shall direct.

5. And this Court doth order and adjudge that the said purchase money be applied in or towards payment of the several claims in the said 1st [and 3rd] schedule[s] mentioned as the said Master shall direct, with subsequent interest and subsequent costs to be computed and taxed by the said Master.

6. And this Court doth further order and adjudge that in case the said purchase money shall be insufficient to pay in full the claims of the several persons mentioned in the said 1st schedule, the persons primarily liable for such claims as shewn in the said 1st schedule do pay to the persons to whom they are respectively primarily liable the amount remaining due to such persons forthwith after the same shall have been ascertained by the said Master.

7. [And this Court doth declare that have not proved any lien under *The Mechanics' and Wage Earners'*

(a) Here may be added when necessary [“and they are entitled to priority in the order in which their claims are set out in the said schedule” or “and they are entitled to rank *pari passu*” or as may be.]

(b) When the action is tried by a local Judge, or any of the officers mentioned in section 33, the reference here directed should be to the local Judge or officer pronouncing the judgment: see section 35 (1).

Lien Act, and that they are not entitled to any such lien, and this Court doth order and adjudge that the claims of liens respectively registered by them against the lands mentioned in the said 2nd schedule be and the same are hereby discharged, *according to the fact.*]

SCHEDULE 1

Names of lien-holders entitled to mechanics' liens.	Amount of debt and interest (if any).	Costs.	Total.	Names of primary debtors.
A	7000	-		P.

(Signature of officer issuing judgment.)

SCHEDULE 2.

The lands in question in this matter are

(Set out by a description sufficient for registration purposes.)

(Signature of officer issuing judgment.)

MECHANICS' LIENS.

SCHEDULE 3.

Names of persons entitled to incumbrances other than mechanics' liens.	Amount of debt and interest (if any).	Costs.	Total.

(Signature of officer issuing judgment.)

60 V. c. 24, Form 12.

(Style of Court and Cause.)

(Date.)

635Certificate
vacating lien.
(a)

I certify that the defendant *A.B. (the owner)* has paid into Court to the credit of this cause all money due and payable by him for the satisfaction of the liens of the plaintiff and *E.F., G.H., I.J., and K.L.*, and their liens are hereby vacated and discharged so far as the same affect the following lands (*describe lands*).

(Signature of Master or Referee.)

(Style of Court and Cause.)

(Date.)

636Certificate
vacating lien.
(b)

I certify that I have inquired and find that the plaintiff is not entitled to a mechanics' lien upon the lands of the defendant *A.B. (the owner)* and his claim of lien is hereby vacated and discharged so far as the same affects the following lands (*describe lands*).

(Signature of Master or Referee.)

59 V. c. 35, Schedule, Forms 13, 14.

(a) This is Form 14 of the Act.

(b) This is Form 15 of the Act.

637

I (*name of lien-holder*) acknowledge to have received from *(name of "owner" or other person making payment)* \$ _____ in full discharge of my mechanics' lien as a [*contractor or sub-contractor, as the case may be*] upon lot (*give short description of land sufficient for registration purposes, e.g., the westerly 40 feet of lot 36, on the north side of _____ Street, according to plan No. _____, registered in the City of _____*).

Form of receipt in discharge of registered lien under R.S.O. c. 153, s. 27.

Dated this _____ day of _____, 19 ____.

(*Signature of lien-holder.*)

WITNESS:

(*Signature of witness.*)

COUNTY OF _____

To wit:

In the matter of "The Mechanics' and Wage-Earners' Lien Act."

I, _____, of (*state residence and occupation*) make oath and say:

1. I was personally present, and did see (*name of lien-holder giving receipt*) duly sign the above [*or annexed or within, as the case may be*] written receipt.

2. That I well know the said (*name of lien-holder*), and the said receipt was signed by him at the (*state place where receipt signed.*)

(*Signature of deponent.*)

Sworn before me, at _____, this _____ day of _____.

(*Signature of commissioner.*) (c).

A Commissioner, &c.

To Mr. (*name of owner*).

638

Take notice that I claim to be a lien-holder under *The Mechanics' and Wage-Earners' Lien Act* upon (*describe shortly the premises in question*) under a contract made by me with *C.D. (name of contractor)* and I do hereby require you to

Demand of terms of contract under R.S.O. 1897 c. 153, s. 29.

(c) The affidavit may be sworn before a commissioner for taking affidavits, see R. S. O. (1897) c. 74, s. 12; or possibly before a notary public: see R. S. O. (1897) c. 175, ss. 3, 4.

furnish me with the terms of the contract or agreement existing between you and the said *C.D.* in reference to [the building *or* the carpenter work of the building now being erected upon the said premises, *or as may be*] and the amount overdue and unpaid upon such contract, pursuant to section 29 of The Mechanics' and Wage-Earners' Lien Act.

Dated, &c.

(*Signature of lien-holder.*)

(*Formal parts: see No. 908.*)

640

Form of interlocutory injunction restraining removal of buildings, etc.

And the plaintiff [in person *or* by his counsel] undertaking to abide by any order this Court may make as to damages in case this Court shall hereafter be of opinion that the defendant [*or* defendants, or any or either of them] shall have sustained any by reason of this order which the plaintiff ought to pay.

This Court doth order that the defendant, his [*or* the defendants, their] servants, workmen and agents be and they are hereby restrained until* the day of next, and until any motion which may on that day be made to continue this *injunction shall have been disposed of,* from moving from the premises known as and being (*describe lands subject to lien*) any of the buildings, erections, material or machinery now standing, lying or being thereon. (*a*)

(*Formal parts: see No. 908.*)

641

Form of injunction granted at trial, restraining removal of buildings, etc. (*b*)

The Court doth order and adjudge that the defendant, his [*or* defendants, their] servants, workmen and agents, be, and they are hereby, restrained from removing from off the premises known as and being (*describe lands subject to lien*) any of the buildings, erections, material or machinery now standing, lying or being thereon until the liens of the plaintiff and other lien-holders entitled to the benefit of this action upon the said lands shall have been satisfied, or this Court shall make other order to the contrary.

(*a*) Where the injunction is subsequently continued to the trial the order may be in a similar form to the above, substituting for the words between the * * the words "the trial or other final disposition of this action."

(*b*) This form is only suitable to be inserted in a judgment. For form of an interlocutory injunction granted pending the action see Form No. 640.

(Formal parts: see No. 902.)

642

Form of order
vacating lien.

Upon the application of (owner) in presence of the solicitor for (lien-holder), and upon hearing read (affidavits and other papers upon which application founded). It is ordered that the claim of (name of lien-holder) to a lien upon the estate or interest of (name of owner) in the following lands, viz.: (description of lands as in registered claim), in respect of the following work [or materials], that is to say, (describe it as in the registered claim) done [or furnished] for (name of person for whom work done or materials furnished as in registered claim) on or before the day of , and in respect of which the sum of \$ was claimed by the said (lien-holder) as due [or to become due] and which said claim was registered in the Registry Office of on the day of at o'clock as No. , be and the same is hereby vacated and discharged.

Auction Sale.

643

Form of
notice of sale
of chattels to
satisfy lien,
under s. 51. (c)

Whereas (name of person indebted) is indebted to the undersigned in the sum of \$ for [work done and materials supplied in the alteration or improvement of one spring waggon], and three months have elapsed since the said sum ought to have been paid, and default has been made in payment thereof, notice is hereby given that on next, the day of , at (place of sale, e.g., the auction room of C.D., No. 6 King Street West, in the City of Toronto), the said (describe chattel) will be sold by (name of auctioneer), by public auction.

(If the sale is to be subject to a reserved bid, or other special conditions, it should be so stated.)

Date, &c.

(Signature of lien-holder.)

(c) See R. S. O. (1897) c. 153, s. 51.

CHAPTER VII.

SALES.

For proceedings in the Master's office under a judgment providing for a sale, see Nos. 997 et seq.

SECTION I.—MOTIONS FOR LEAVE TO BID.

644

Notice of motion for leave to bid at sale.

(Formal parts: see No. 403.)

on behalf of the plaintiff [*or, of the defendant or other party having the conduct of the sale*], that he may be at liberty to bid at the sale directed by the judgment [*or order*] dated the day of , 19 , of the lands in question in this cause. And take notice (&c., *as in No. 403.*)

SECTION II.—MOTIONS TO ENFORCE CONTRACT.

645

Notice of motion to compel payment in of the purchase money, and for a re-sale on default.

(Formal parts: see No. 403.)

1. On the part of the plaintiff (*or other persons having the conduct of the sale*), that A.B., who, by the report of the Master at , dated , was declared to be the purchaser of the land and premises directed to be sold by the judgment herein dated , may be ordered, on or before the , 19 , or subsequently within seven days after service, to pay into Court, to the credit of this cause (*or as may be: according to the judgment or order for sale*), the sum of , being the purchase money for the said premises:

[*Or, being the balance of the purchase money for the said premises, after deducting \$, paid by him as a deposit: If so, together with interest thereon at \$ per cent. per annum from the , 19 (as in the conditions or contract of sale), until payment.*]
If so, making together the sum of \$.

2. That the said A.B. may be ordered to pay to the applicant his costs of this application.

3. *Add, if desired:* That in default of such payment being made by the said A.B. within the time aforesaid, the premises

whereof he has been allowed the purchaser, as aforesaid, may be re-sold pursuant to the conditions of sale under which he purchased the same; and that the said *A.B.* may be ordered to make good any deficiency in the price which may be obtained upon such re-sale and all costs and expenses occasioned by his default, and in case the said premises cannot be re-sold that the said *A.B.* may be held to his purchase. And take notice (*&c., as in No. 403.*)

(*Formal parts: see No. 902.*)

1. It is ordered that do forthwith pay to the sum of costs of this application.

646
Order thereon.

2. And it is ordered that the said do within days after the service hereof, pay into Court to the credit of this cause, subject to further order, the sum of being

3. And in default of payment by the said within the time aforesaid, it is ordered that the parcel or tract of land and premises purchased by the said be re-sold with the approbation of .

4. And in case no purchaser shall be found for the same on such re-sale, or in case the same shall be re-sold for less than the said sum of

It is ordered that the said do within days after service of the certificate of the result of such re-sale pay the said sum of in case the same shall not be re-sold or the difference between the said sum of and the amount for which the said lands shall be so re-sold, in case the same shall be re-sold for less than the said sum of into Court to the credit of this cause subject to further order.

5. And it is ordered that the said do pay to the [his] costs and expenses occasioned by such default as aforesaid forthwith after the taxation thereof.

Proceed as in No. 645, to "may be ordered"; and continue thus:

on or before the , 19 , or subsequently within seven days after service, to pay into Court, to the credit of this cause [or as may be], the sum of \$, being the difference between the sum of \$, the price at which the said *A.B.* was allowed the purchaser as aforesaid, and the sum of \$ for which the said premises have been re-sold in pursuance of the order

647
Notice of motion to compel payment by former purchaser of deficiency on a re-sale, after his default.

dated the , 19 , on his default; and that the said A.B. may be ordered to pay the applicant and defendants (*or as may be*) all costs and expenses of and occasioned by such default, and of this application.

. And take notice (*&c., as in No. 403*).

SECTION III.—MOTIONS TO DISCHARGE AND SUBSTITUTE PURCHASERS.

(*Formal parts: see No. 403.*)

648

Notice of motion by purchaser, to be discharged from his purchase.

on the part of A.B. who (*describe the purchaser, as in No. 645*).

1. That the applicant may be discharged from being such purchaser.

2. That his costs, charges, and expenses occasioned by his bidding for [*or, by his entering into the conditional contract dated the day of 19 , in the said order of the day of , 19 , mentioned*], and being allowed the purchaser of the said premises, and of and incident to this application, may be taxed.

3. That his said costs, charges, and expenses [*If so, and also the sum of \$, paid by him as a deposit on his purchase money*] may be paid to him out of the \$, moneys in Court to the credit of this cause (*or as may be*) [*or, may be paid to him by the plaintiff, C.D.*] without prejudice to the question by whom, or out of what fund, the same should be ultimately borne. And take notice (*&c., as in No. 403*).

649

Notice of motion by vendor to discharge a purchaser.

Proceed as in No. 645, to end of description of the purchaser; and continue thus: that the said A.B. may be discharged from being such purchaser, on the terms following (state them).

(*Formal parts: see No. 403.*)

650

Notice of motion to substitute a purchaser.

on the part of A.B. who (*describe the original purchaser, as in No. 645; and continue thus:*)

and of C.D., of (*residence and addition*), that the said C.D. may be substituted for the said A.B. as the purchaser of the

said premises; and upon complying with the conditions of sale be let into possession of the said premises, or into the receipts of the rents and profits thereof, from the day of ; and that all proper parties may be ordered to join in and execute a proper conveyance or assurance of the premises to the applicant, or as he shall direct: such conveyance or assurance to be settled by the Master at , in case the parties differ. And take notice (*&c.*, as in No. 403).

(*Title of the cause.*)

651

We, *A.B.*, of (*residence and addition*), and *C.D.*, of (*residence and addition*), severally make oath and say as follows: Affidavit in support, before report on sale has become confirmed.

1. We have agreed that, if approved by this Honourable Court, the deponent *C.D.* shall be substituted for the deponent *A.B.* as the purchaser, at the price of \$, of the lands comprised in parcel , part of the lands sold under the judgment [*or order*] dated the day of , 19 , in this cause, and for which the deponent *A.B.* was declared to be the purchaser at the sum of \$, at the sale thereof at , on the of , 19 .

2. And we, each speaking positively as to himself, and to the best of his knowledge and belief as to other persons, lastly say, that save as aforesaid, there is no agreement, underbargain, contract, or understanding whatsoever by or between us, or by or between any other person or persons by our order, or on our behalf, respectively, for or in respect of the said premises so purchased by the deponent *A.B.*, as aforesaid.

(*Formal parts: see No. 651.*)

652

1. We have agreed that, if approved by this Honourable Court, the deponent *C.D.* shall be substituted for the deponent *A.B.*, as the purchaser of the [land comprised in parcel , part of the] lands sold under the judgment [*or order*] dated the day of , 19 , in this cause, and whereof the deponent *A.B.* is allowed the purchaser by the report on sale, dated the day of , 19 . Affidavit in support of motion to substitute a purchaser after report on sale has become confirmed.

2. And we, each speaking positively as to himself, and to the best of his knowledge and belief as to other persons, lastly say, that no agreement, underbargain, contract, or understand-

ing whatsoever, by or between us, or by or between any other person or persons by our order, or on our behalf, respectively, for or in respect of the said premises, was made, entered into, or come to upon or at any time prior to the day of , 19 , (*day when report became confirmed*).

(*Formal parts: see No. 403.*)

653

Notice of motion to open biddings, or for a re-sale.

on the part of the plaintiff (*or as may be*), that the sale, on the day of , 19 , of [parcel No. , of] the lands and premises directed to be sold by the judgment [*or order*] dated the day of , 19 , may be set aside and the biddings opened, and that *A.B.* may be discharged from being the purchaser of the said lands, and that the offer of *A.B.* to purchase the same for the sum of \$ may be accepted, or that the said lands may be directed to be re-sold. And take notice (*&c., as in No. 403.*).

SECTION IV.—MOTIONS FOR COMPENSATION.

654

Notice of motion for compensation by purchaser.

(*Formal parts: see No. 403.*)

on behalf of *A.B.*, of the Township of , in the County of , farmer, the purchaser of , for an order authorizing him to retain out of his purchase money [*or for payment out of Court, or by the plaintiff, to the said A.B.*] of the sum of \$ for compensation for the loss sustained by the said *A.B.* by reason of (*here state the ground on which compensation is claimed*). And take notice (*&c., as in Form No. 403.*).

(*Affidavit proving right to compensation accompanies.*)

SECTION V.—MOTIONS TO DISPENSE WITH PAYMENT OF PURCHASE MONEY INTO COURT.

655

Notice of motion to dispense with payment of purchase money into Court.

(*Formal parts: see No. 403.*)

on behalf of *A.B.* [of the Township of Vaughan, in the County of York, farmer], the purchaser of the lands [*or, of parcel number (one) of the lands*] sold in this cause [*if more than one sale, add at the sale had herein on the* day of , 19], for an order dispensing with payment into Court

of the amount of his purchase money and the interest accrued thereon [*or*, of \$, part of his purchase money, and the interest accrued thereon since the day of]. And take notice (&c., as in No. 403).

(*Short style of cause.*)

I, *C.D.*, of , the plaintiff in this cause, do acknowledge to have received this day from *A.B.*, the purchaser of the lands [*or* of parcel number (one) of the lands] sold in this cause on the day of , the sum of \$, being the amount of his purchase money for the said lands with interest thereon to date, and I consent to an order being made dispensing with payment of the said purchase money into Court.

656

Receipt of party entitled to purchase money, and consent to order dispensing with payment of same into Court.

Dated, &c.

C.D.

Witness, *S.B.*

(*Short style of cause.*)

I, *C.D.*, of , one of the defendants in this cause, do consent and agree that an order be made dispensing with payment into Court by *A.B.*, the purchaser of the lands [*or* of parcel number (one) of the lands] sold in this cause, of \$, being the amount of his purchase thereof, and also of the interest which has accrued or may hereafter accrue thereon; and I give this consent knowing that I am entitled to the said purchase money, and that I am entitled to have the same paid into Court in this cause, and knowing also that the same if paid into Court would not be paid out except to me or to my order.

657

Another form.

Dated, &c.

C.D.

Witness, *S.B.*

(*Formal parts: see No. 744.*)

I was personally present and did see [the defendant *C.D.*] sign the consent now produced and shewn to me, marked A., on the day of the date thereof, at , in the County of , and the name "*C.D.*" thereunto subscribed is in the proper

658

Affidavit verifying consent.

handwriting of the said defendant *C.D.*, and the name "*S.B.*" thereunto subscribed as the name of the witness attesting the said signature of the said *C.D.*, is of the proper handwriting of me this deponent.

(Where the receipt is in the Form No. 657, add:)

2. I further say that immediately before the said defendant *C.D.* so signed the said consent, I explained to the said *C.D.* and he thoroughly understood that he is entitled to the purchase money of the said *A.B.* referred to in the said consent, and the interest which has accrued and may hereafter accrue thereon, and that he the said defendant *C.D.* was entitled to have the said purchase money and interest paid into Court by the said *A.B.* in this cause, and that if the same were paid into Court, the same would not be paid out except to him the said defendant *C.D.*, or his lawful representatives, or to his or their order.

SECTION VI.—MOTIONS FOR DELIVERY OF POSSESSION.

(Short style of cause.)

659

Notice by purchaser to vendors' solicitor requiring delivery of possession.

Take notice, that the purchaser *A.B.* has paid into Court his purchase money pursuant to the conditions of sale, and he hereby requires you to deliver to him possession of the lands purchased by him in this cause, on the day of next; and take notice, that he will on that day attend on the premises at such hour as you may appoint to receive possession of the said lands, and in default of possession being on that day delivered to him he will make application to the Court to compel you to deliver possession thereof.

Dated, &c.

Yours, &c.,

To
Plaintiff's Solicitor.

C.D.,
Solicitor for the said *A.B.*

(Short style of cause.)

660

Notice by vendors' solicitor of time for delivering possession.

Take notice, that the vendors will on next, at o'clock in the forenoon, deliver possession to *A.B.*, or to whom he may appoint, of the lands purchased by him in this cause,

and he is hereby notified to attend on the premises at the above-named time to receive possession.

Dated, &c.

Yours, &c.,

To Mr. *C.D.*,
Solicitor for *A.B.*

Plaintiff's Solicitors.

(Short style of cause.)

661

We hereby demand and require of you to quit and deliver to *A.B.*, (a) of , in the County of , farmer, on or before the day of next, the possession of the lands in question in this cause, being [lot No. , in Concession of the Township of , in the County of ,] of which you are now in the occupation, the said *A.B.* having become the purchaser thereof at the sale had in this cause, and having duly complied with the conditions of sale, and being now entitled to receive possession of the same. And take notice, that in case you shall fail to quit and deliver up possession of the said lands as hereby required, an application will be made to the High Court of Justice to compel you to quit and deliver up possession of the said premises, and to pay the costs of this demand, and occasioned by your default.

Demand of possession.

Dated, &c.

H. & M.,

Plaintiff's Solicitors.

To the defendant *D.F.*

(See No. 765, then proceed):

662

2. At the time of such [or on the day of after the] service of the said demand, I did demand of the said *D.F.* the possession of the said premises in the said demand mentioned, but the said *C.D.* then said (*state answer*), and refused to quit and deliver up possession of the said premises, and continues still to hold and occupy the same.

Affidavit of service and demand by person to whom possession is required to be delivered.

(Formal parts: see No. 403.)

663

on behalf of (*the vendors, or the purchaser: see Rule 733*) for an order directing the defendant *D.F.* to deliver up

Notice of motion for delivery of possession.

(a) Where the possession is not to be delivered to the purchaser, the form of demand must be varied accordingly.

possession of the lands and premises in question in this cause within such time as this Honourable Court shall direct, and also to pay to the applicant his costs of and incidental to this application, including the demand of possession served upon the said defendant *D.F.* And take notice (&c., as in form No. 403).

(*Short style of cause.*)

664

Demand of possession by mortgagee after final order of foreclosure. (a)

I hereby require you forthwith to quit and deliver up possession of the lands and premises in question in this cause, being lot number , in the Concession of the Township of , in the County of , to me [*or to my agent C.D.*], I having obtained a final order of foreclosure against you in this cause, dated the day of 19 .

Dated, &c.

A.B.

To the defendant *E.F.*

665

Affidavit of service and demand of possession.

(*See No. 662.*)

666

Notice of motion for delivery of possession by mortgagor to mortgagee after final order of foreclosure. (a)

(*Formal parts: see No. 403.*)

on behalf of *A.B.*, the above-named plaintiff, for an order directing the defendant *C.D.* forthwith to quit and to deliver up to the plaintiff the possession of the lands and premises in question in this cause, being (*describe the lands*), and that he do pay to the plaintiff his costs of and incidental to this application. And take notice (&c., as in Form No. 403).

SECTION VII.—MOTIONS FOR VESTING ORDERS.

(*Formal parts: see No. 403.*)

667

Notice of motion for vesting order.

on behalf of *A.B.*, of the [Township of Vaughan, in the County of York, farmer], the purchaser of the lands [*or of parcel number (one) of the lands*] sold in this cause [*if more*

(a) Usually the mortgagee's judgment provides for the delivery of possession, in which case possession may be obtained by writ of possession without demand or motion.

than one sale, add at the sale had herein on the day of
 , 19 ,] for an order vesting the said lands, being (*describe
 them as they are intended to be described in the vesting
 order*), in the said A.B., his heirs and assigns, for all the
 estate, right, title and interest of the plaintiff and the defend-
 ants (*or as may be*) therein and thereto. And take notice
 (&c., as in No. 403).

(*Short style of cause.*)

I certify that [A.B.] the purchaser of the lands [*or, of* **668**
 parcel number one of the lands] sold in this cause has paid Accountant's
 certificate of
 payment of
 purchase
 money.
 the full amount of his purchase money into Court to the
 credit of this cause.

Dated, &c.

(*Formal parts: see No. 902.*)

1. Upon the application of of the of **669**
 in the County of (*occupation*) the purchaser at the Vesting order
 sale herein of the lands hereinafter described, upon reading
 the judgment and report on sale herein, and (*as may be the
 case*), and upon hearing the solicitor for the applicant and
 for the (*the vendor*).

2. It is ordered that the following lands and premises being
 all and singular (*describing them*) be and the same are hereby
 vested in the said , his heirs and assigns for all the estate,
 right, title, and interest, of the plaintiff and defendants in
 this action therein and thereto.

In the High Court of Justice,

This is to certify that by a vesting order bearing date the **670**
 day of A.D. 19 , and made by the said Court in Certificate of
 vesting order
 for registra-
 tion.
 a certain action pending therein, wherein
 is plaintiff, and , is defendant.

Upon the application of

It was ordered that the lands and premises known as and
 being all and singular that certain parcel or tract of land and
 premises situate, lying and being (*describing the land*) should

be and the same was thereby vested in the said (*purchaser*) his heirs and assigns forever for all the estate, right, title and interest of the above-named [plaintiff and defendants, *or as may be the case*] therein and thereto.

And at the request of the this certificate is given for the purpose of registration pursuant to the statute in that behalf. . .

Given under my hand, and the Seal of the said Court, this day of A.D. 19 . .

(*Signature.*)

[Clerk of Records and Writs *or title of other officer issuing certificate.*]

SECTION VIII.—ENFORCEMENT OR DISCHARGE OF MORTGAGES HELD BY THE ACCOUNTANT.

671

Order to Accountant to deliver out mortgage for suit.

(*Formal parts: see No. 902.*)

It is ordered that the Accountant of the Supreme Court of Judicature for Ontario do deliver up to the solicitor the mortgage made herein by the said to the dated the day of 19 , for the purpose of bringing suit to recover the amount overdue and unpaid upon the said mortgage, and that the said solicitor be at liberty to use the name of the said Accountant as plaintiff in the suit to be brought to recover the amount due on the said mortgage, upon the said giving to the said Accountant proper indemnity therefor.

672

Order for discharge of a mortgage given by a purchaser to the Accountant. (a)

(*Formal parts: as in No. 902.*)

1. Upon the application of and upon reading the mortgage dated the day of , 19 , given by to the Accountant of the Supreme Court of Judicature for Ontario and the certificate of the Accountant;

2. It is ordered that the said mortgage be discharged upon a proper certificate of discharge being tendered for execution.

(a) This order is only necessary where the mortgage has been paid off otherwise than by payment into Court. When the full amount of the mortgage debt is paid into Court the mortgage will be discharged without an order: See Rule 80.

CHAPTER VIII.

EVIDENCE.

SECTION I.—ADMISSIONS.

(*Court and shortened style of cause, No. 25.*)

Admissions on the part of the plaintiff and defendant.

673
Admission by
agreement.

It is hereby agreed, on behalf of the plaintiff and defendant respectively, to make the following admissions; and that these admissions, and the documents mentioned or referred to therein, may be used and read in evidence upon the trial of this action, and for all the purposes thereof, save and except all just causes of exception to the admissibility of the same as evidence; that is to say:

1. That the several deeds specified in the first schedule hereto, and identified by our respective initials thereon, are the deeds of the like respective dates mentioned in the pleadings of this cause; and that the said deeds were respectively executed as they respectively purport to have been.

2. That the several letters specified in the first part of the second schedule hereto, and identified by our respective initials thereon, were respectively signed as they purport to have been; and were received, in due course, by the respective persons to whom such letters respectively purport to be addressed, with the enclosures in such letters referred to, from the persons by whom such letters respectively purport to have been written.

3. That the paper writing marked A., identified by our respective signatures at the foot thereof, contains true copies of the several letters specified in the second part of the second schedule hereto; and that the originals of such letters respectively were duly signed as they purport to have been, and were received in due course (*Continue as in par. 2, to the end*).

4. That the copies of letters contained in the said paper writing marked A., or any of them, may be read in evidence as primary and the best evidence, and not as secondary evidence, and shall have the same force as if they were the originals of such letters; and that the said original letters shall not be required to be produced, or any evidence required as to the same, or of the proper custody thereof, or as to the non-production thereof.

5. That *A.B.*, in the statement of claim named, died on the of , 19 , intestate, and without having been married.

6. That the defendant *C.D.* is the eldest son and heir at law of *E.F.*, in the said bill named.

7. That the defendant *C.D.* is the heir of the said *E.F.*

We also undertake to produce, for the purposes aforesaid, or any of them, on the hearing of this cause, and otherwise as occasion may require, such of the documents specified in the schedules hereto as are in our possession respectively.

Dated this day of , 19 .

T.B., plaintiff's solicitor [*or*, agent.]

J.F., defendant's solicitor [*or*, agent.]

THE FIRST SCHEDULE ABOVE REFERRED TO.

Deeds.

Serial Number.	Dates.	Description.	Parties.
1	1894. January 1	Lease . . .	A. B. one part, and C.D. other part.
2	1895. December 31	Conveyance .	E. E. first part, G. H. second part, and J. L. third part.

THE SECOND SCHEDULE ABOVE REFERRED TO.

Letters.

Serial number.	Dates.	By whom written.	To whom sent.
<i>First Part.</i>			
3	1898 April 1 . . .	Defendant . . .	Plaintiff.
4	" May 10 . . .	J. F. Defendant's solicitor . . . }	T. B. Plaintiff's solicitor.
<i>Second Part.</i>			
5	1898 April 12 . . .	L. M.	N. O. . . .
6	" May 18 . . .	P. R.	S. T. . . .

(Court and shortened style of cause: see No. 25.)

We the undersigned, solicitors for the plaintiff and defendants respectively, hereby agree to admit upon the trial of this action, and for all the other purposes of this action, that such of the documents mentioned in the schedule hereto as are therein specified to be originals were respectively written, signed or executed as they purport respectively to have been; that such of the said documents as are therein specified as copies are true copies; and that such of the said documents as are therein stated to have been served, sent or delivered were so served, sent or delivered respectively: saving all just exceptions to the admissibility of all such documents as evidence in this suit.

674

Another form
of admissions.

(Dated and signed as in last Form.)

(For form of schedule, see No. 673, distinguishing which documents are original and which copies.)

SECTION II.—DOCUMENTARY EVIDENCE.

Dominion of Canada.

Province of Ontario,
To Wit:

675

Certificate
verifying a
copy of a
public record
etc. (a)

I.

of the [City of Toronto, Clerk of Records and Writs] of the High Court of Justice for Ontario, do hereby certify that the annexed paper writing, each page of which is stamped with the seal of the [Central Office of] said Court as identifying the same, contains a true copy of _____ pending in the [Central Office], in a certain _____ said Court.

That I have carefully compared the said transcript with the original in the said [Central Office], that it is a true transcript thereof, and that I am the officer duly authorized to give this certificate.

In witness whereof I have hereunto set my hand and the seal of the said Court this day of A.D. 19 .

(Signature.)

[Clerk of Records and Writs *or other officer.*]

(a) See R. S. O. 1897 c. 73, s. 26.

676

Certificate as to signature of officer of the Court signing certificate.

Dominion of Canada.

Province of Ontario,
To Wit:

I, the Honourable _____ of the City of Toronto, in the Province of Ontario, _____ of the High Court of Justice for Ontario, do hereby certify, that _____ whose signature is given in the annexed certificate, is the [Clerk of Records and Writs] of the High Court of Justice for Ontario, and that I am well acquainted with his signature, and that his signature to the said certificate is genuine, and that all of his acts as such [Clerk of Records and Writs] are entitled to full credence.

Witness, my hand this _____ day of _____ in the year of our Lord 19 _____.

(Court and style of cause: No. 24 or 25.)

677

Notice of intention to use letters probate as evidence of original will.
(a)

That the plaintiff [or defendant] intends at the trial (or other proceeding at which the evidence is required to be adduced) of this action, to give in evidence as proof of the devise of the lands and premises in question in this cause (or other testamentary disposition) by A.B. (the testator), to C.D., the probate of the will of the said A.B. [or the letters of administration with the will of the said A.B. annexed], or a copy thereof stamped with the Seal of the Surrogate Court of the County [or united Counties] of _____.

Dated, &c.

Yours, &c.,

To C.D.,

A.B.,

, Solicitor.

Solicitor.

(Formal parts: as in No. 677.)

678

Notice to compel production of original will. (b)

That defendant [or, plaintiff] disputes the validity of the alleged devise of the lands and premises in question in this [action or matter] (or other alleged testamentary disposition) by A.B. (the alleged testator) to C.D., referred to in your notice to me dated the _____ day of _____, 19 _____.

Dated, &c. (Conclude as in Form No. 677.)

(a) This notice must be served ten clear days before the trial: R. S. O. 1897, c. 73, ss. 41, 42, and Rule 344 (2). As to effect of notice, see *Barraclough v. Greenhough*, 2 L. R. Q. B. 612.

(b) This notice must be served within four days after receipt of notice No. 677. R. S. O. 1897 c. 73, s. 41.

(Formal parts: as in No. 677.)

679

That the plaintiff [or, defendant] intends, at the trial (or *other proceeding at which the evidence is required*) of this action, to give in evidence as proof of the deed of conveyance of the lands in question in this cause from *A.B.* and *C.D.* to *W.J.*, dated the day of , 19 , and also of an agreement between *W.J.* and *E.F.* relating to the said lands, dated the day of , 19 , copies of the said deed and agreement, certified by the Registrar of the County [or united Counties, *or as may be*] of , under his hand and seal of office.

Dated, &c.

Yours, &c.,

To *C.D.*, Esq.,

A.B.,

Solicitor.

Solicitor.

(Formal parts: as in No. 677.)

680

That defendant [or, plaintiff] disputes the validity of the alleged conveyance of the lands in question in this cause from *A.B.* and *C.D.* to *W.J.*, dated the day of , 19 , and the alleged agreement between *W.J.* and *E.F.* relating to the said lands, dated the day of , 19 .

Dated, &c.

Yours, &c.,

To *A.B.*, Esq.,

C.D.,

Solicitor.

Solicitor.

(Formal parts: as in No. 744.)

681

1. This action is now at issue, and notice of trial has been given for the next sittings of this Court to be holden at on the day of .

2. It is material and necessary for me [or the applicant] to give in evidence at the trial of this action, a certain will of *A.B.*, dated the day of , 19 , (or other instrument of which the production is sought), which said will is now filed of record in the Registry Office of the County of .

Affidavit on application for order for subpoena to County Registrar to produce an original record under Rule 479.

(c) This notice must be served ten clear days before trial: see R. S. O. 1897 c. 73, s. 47, and Rule 344 (2).

(d) This notice must be served within four days after the receipt of notice No. 679 (*Id.*).

3. [If notice of intention to prove same by means of a certified copy according to Form No. 679, has been served, that fact should be stated also, that the opposite party has served notice to effect of Form No. 680, if such is the case; or state reasons why a certified copy of the original instrument sought to be produced would not be sufficient evidence; e.g.:

4. The (defendant) disputes the validity of the said will, and alleges in his defence that the same is a forgery].

682

Another form.

(Formal parts: as in No. 744.)

1. The statement of claim in this action has been duly served on the defendants, and they on the day of filed their defence thereto.

2. An appointment has been obtained for the examination of the said defendants before , Esq., (Master of this Court at , or a special examiner of this Court at), on the day of pursuant to the provisions of the Consolidated Rules in that behalf.

3. Upon such examination it is material and necessary for the plaintiff to be able to produce to the said defendants a certain will of A.B. (proceed as in the preceding form).

683

Order for subpoena to issue to County Registrar to produce original instrument.

(Formal parts: as in 902.)

1. It is ordered, that a writ of *subpoena, ad testificandum et duces tecum* do issue out of and under the seal of this Court, directed to [the Registrar of the County of], requiring him to be present [at the trial of this action at the next sittings of this Court to be holden at , or as the case may require], and produce [the original will of A.B., dated the day of , or other instrument required to be produced, now in his custody as such registrar, or, filed of record in his office, or as the case may be].

684

Subpoena to County Registrar.

(See Form No. 694.)

The officer issuing the subpoena must note in the margin thereof, "Issued pursuant to order made in Chambers, dated day of .

"A.H.,
Clerk of Records and Writs,"
(or other proper officer.)

(*Formal parts: see No. 744.*)

685

1. That an action is now pending in the High Court of Justice for Ontario, between *A.B.* and *C.D.*, plaintiffs, and *D.E.* and *F.G.*, defendants, and the said action is coming on for trial at the next assizes to be holden at the Town of _____, in and for the County of _____, on the _____ day of _____ next.

Affidavit in support of motion for order for officer of the court to attend with pleadings, etc., at trial.

2. That it is material and necessary for the plaintiff upon the trial of the said action to be able to produce in evidence certain (*state nature of documents required*) which [are] now upon the files of this Honourable Court, [*or*, which are now deposited in this Honourable Court] in the office of the _____ in this cause.

3. (*State why office copies of the documents sought to be produced will not be sufficient evidence.*)

Notice to Produce (General Form). (Rule 488, &c.).

In the High Court of Justice.

Between _____

and _____

Plaintiff,

Defendant.

686

Notice to produce. (a)

Take notice that you are hereby required to produce and shew to the Court on the trial of this action all books, papers, letters, copies of letters, and other writings and documents in your custody, possession or power, containing any entry, memorandum, or minute relating to the matters in question in this action, and particularly the following:—(*setting them out*).

Dated, &c.

Description of document.	Date.
--------------------------	-------

(*Signature.*)

To the above-named
and to his solicitor or agent. } Solicitor for the above-named.

Con. Rules, 1888, Form 24.

(a) Con. Rules 1897, Form 62.

687

Notice to
admit. (a)

Notice to admit Documents. (Rule 527.)

In the High Court of Justice.

Between—*A.B.*, Plaintiff,
and
C.D., Defendant.

Take notice that the plaintiff [*or*, defendant] in this cause proposes to adduce in evidence the several documents hereunder specified, and that the same may be inspected by the defendant [*or*, plaintiff] his solicitor or agent at _____, on _____ between the hours of _____; and the defendant [*or*, plaintiff] is hereby required, within 4 days from the said day, to admit that such of the said documents as are specified to be originals were respectively written, signed, or executed, as they purport respectively to have been, that such as are specified as copies are true copies, and that such documents as are stated to have been served, sent, or delivered, were so served, sent, or delivered respectively; saving all just exceptions to the admissibility of all such documents as evidence in this cause.

Dated, &c.

X.Y.,

Solicitor for

To *E.F.*, Solicitor [*or*, agent] for Defendant [*or*, Plaintiff].

To *G.H.*, Solicitor [*or*, agent] for Plaintiff [*or*, Defendant].

Here describe the documents, the manner of doing which may be as follows:

ORIGINALS.

Description of Documents.	Dates.
Deed of covenant between <i>A.B.</i> and <i>C.D.</i> , first part and <i>E.F.</i> second part	January 1, 1878.
Indenture of lease from <i>A.B.</i> to <i>C.D.</i>	February 1, 1878.
Indenture of release between <i>A.B.</i> , <i>C.D.</i> , first part, &c. .	February 2, 1878.
Letter—Defendant to Plaintiff	March 1, 1878.
Policy of Insurance on goods by ship " <i>Isabella</i> " on voyage from Toronto to Kingston	July 3, 1877.
Memorandum of agreement between <i>C.D.</i> , captain of said ship, and <i>E.F.</i>	August 1, 1878.
Bill of exchange for \$500 at 3 months, drawn by <i>A.B.</i> on and accepted by <i>C.D.</i> , indorsed by <i>E.F.</i> and <i>G.H.</i>	May 1, 1879.

COPIES.

Description of Documents.	Dates.	Original or duplicate served, sent or delivered, when, how, and by whom.
Register of baptism of <i>A.B.</i> in the parish of <i>X</i>	January 1, 1848.	Sent by General Post February 2, 1848. Served March 2, 1878 on defendant's solicitor by <i>E.F.</i> , of—
Letter—Plaintiff to defendant....	February 1, 1848.	
Notice to produce papers.....	March 1, 1878.	
Record of a Judgment of the Court of Queen's Bench in an action, <i>J.S. v. J.N.</i>	Trinity Term, 10th Vict.	

Con. Rules, 1888, Form 26.

I hereby make the admissions required to be made by the within notice. [*If some only of the documents are admitted, qualify the admission; as thus:* so far as relates to the documents distinguished therein by the numbers 1, 2, 3, &c.; and I decline to make any other of the admissions required by the said notice]. Dated this day of , 19 .

Witness
C.D.

A.B., Solicitor [*or, agent*] for the
defendant [*or as may be*].

688
Admission
thereupon.

(*Formal parts: see No. 744.*)

I, *C.D.*, of , clerk to Mr. , plain-
tiff's solicitor in this cause, make oath and say, as follows:—

1. I was present on the day of , and did see *A.B.*, solicitor herein for the above-named , sign the admissions at the foot of, [*or, indorsed upon, or, annexed to*] the notice to admit hereto annexed and marked Exhibit "*A*."

2. The signature "*A.B.*" subscribed to the said admissions is of the proper handwriting of the said *A.B.*

Sworn, &c.

689
Affidavit of
signature of
admission.

(*Formal parts: see No. 744.*)

690

Affidavit of
service of the
notice, and
refusal to
admit.

1. On the day of , 19 , I served Mr. *E.F.*, the solicitor [*or, agent*] in this cause for the defendant *A.B.* (*or as may be*), with the notice in writing dated the of , 19 , to admit documents now produced and shewn to me, and marked "*A*," and addressed to (*state whom*), by delivering a true copy of the said notice to, and leaving the same with—*If personally, say: the said E.F. at (state where)—Or, if not personally, say: the clerk [or servant—or as may be] of the said E.F., at his office [or, address for service] situate at (state where).*

2. The said *E.F.* inspected the documents specified in the said notice, at the time and place mentioned in such notice [*or, the said E.F. has inspected the documents specified in the said notice since the aforesaid service thereof—[or, the said E.F. has not nor has the said defendant (or as may be), or any other person on his behalf, inspected the documents specified in the said notice or any of them since the aforesaid service of the said notice.]*

3. The said defendant (*or as may be*) and his solicitor [*and agent*] in this cause, have refused or neglected to admit the said documents, or any of them, as required by the said notice; and no admission of the said documents or any of them hath in fact been made by the said defendant (*or as may be*), or by any person on his behalf.

691

Affidavit of
service of
notice to pro-
duce.

The same as No. 690, to the end of par. 1; but substitute "produce" for "admit."

692

Affidavit of
execution of a
deed, and
proving hand-
writing of
other docu-
ments.

(*Formal parts: see No. 744.*)

1. I saw (*describe the party, as thus: the plaintiff A.B. or, the defendant C.D.—or, E.F., the testator in the pleadings of this cause named—or as may be*) sign, seal, and as his act and deed deliver the indenture [*or, deed poll*], dated the day of , 19 , and marked "*A*," now produced and shewn to me, and purporting to be [*describe shortly, what; as thus: a settlement on the intended marriage of the said plaintiff*].

2. The signature “ ,” set and subscribed to the said indenture [*or*, deed poll], as the party [*or*, one of the parties] executing the same, is of the proper handwriting of the said plaintiff (*or as may be*).

3. The signature “ ,” set and subscribed to the attestation to [*or*, indorsed on] the said indenture [*or*, deed poll], of the execution thereof by the said plaintiff (*or as may be*), is of my proper handwriting.

4. I am well acquainted with the handwriting of the plaintiff *A.B.* (*or as may be*) having seen him write.

5. The (sixteen) several letters marked respectively “A,” “B,” “C,” “D,” &c., now produced and shewn to me, and dated respectively the 19 , &c., are of the proper handwriting of the said *A.B.*, and are respectively signed by him (*or as may be*).

6. The signature “ ,” to the agreement dated the 19 , marked “G,” now produced and shewn to me, is also of the proper handwriting of the said *A.B.*

(*Formal parts: see No. 744.*)

693

1. The document marked “C,” now produced and shewn to me, is a copy of a correspondence [*describe it, as thus*].
 Affidavit, verifying copy of correspondence and loss of a document.
 between me and Messrs. *A.B. & Co.*, the plaintiff’s solicitors in this cause], having reference to the subject matter of this suit: omitting signatures and other formal parts of such correspondence.

2. On or about the of , 19 , I received a letter from the defendant *A.B.* I have lately made diligent search for the said letter in all places where the same was likely to be found, but I have been unable to find it, and I do not know what has become thereof.

3. The paper writing marked “A,” now produced and shewn to me, is a true copy of the said letter: as I know from (*shew means of knowledge*).

SECTION III.—ORAL EVIDENCE—PROCURING ATTENDANCE OF WITNESSES, &c.

694

Subpoena ad test. (general)
(a)

Subpoena ad Testificandum (General Form).

In the High Court of Justice.

Between—A.B., Plaintiff,
and
C.D., and others, Defendant.

Edward the Seventh, by the Grace of God, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India, to greeting: We command you to attend before at on day the day of , 19 , at the hour of in the noon, and so from day to day until [the above cause is tried, *or as may be*], to give evidence [*or, for examination for discovery, or as may be*] on behalf of the [plaintiff *or, defendant*].

Witness, the Honourable President, &c., the day of , 19 .

In the margin:

Issued from the office of the of the High Court of Justice in the County of .

To be indorsed:

This writ was issued by A.B., of , Solicitor for the plaintiff (*or as the case may be*).

Con. Rules, 1888, Form 114.

Subpoena Duces Tecum (General Form).

[Title, &c.]

695

Subpoena duces tecum (general). (b)

Edward the Seventh, &c. (*see No. 694*), greeting: We command you to attend before at on day the day of , 19 , at the hour of in the noon, and so from day to day [until the above cause is tried, *or as may be*], to give evidence [*or, for examination for discovery or as may be*] on behalf of the and also to bring with you and produce at the time and place aforesaid (*specify documents to be produced*).

Witness, the Honourable President, &c., the day of , 19 .

Memo. of issue and indorsement as in Form 694.

Con. Rules, 1888, Form 115.

(a) Con. Rules 1897, Form 88.

(b) Con. Rules 1897, Form 89.

Subpœna ad Testificandum at Assizes.

[Title, &c.]

Edward the Seventh, &c. (*see No. 694*), greeting: We **696** *Subpœna ad. test. at assizes. (c)*
command you to attend before our Justices assigned to take
the Assizes in and for the County of to be holden at ,
on day the day of , 19 , at the hour
of in the noon, and so from day to
day during the said Assizes until [the above cause is tried,
or as may be] to give evidence on behalf of the
Witness, the Honourable President, &c., the day
of , 19 .

Memo. of issue and indorsement as in Form 694.

Con. Rules, 1888, Form 116.

Subpœna Duces Tecum at Assizes.

[Title, &c.]

Edward the Seventh, &c. (*see No. 694*), greeting: We **697** *Subpœna duces tecum at assizes. (d)*
command you to attend before our Justices assigned to take
the Assizes in and for the County of to be holden at
on day the day of , 19 , at the hour of
in the noon, and so from day to day during the said
Assizes, until the above cause is tried, to give evidence on
behalf of the , and also to bring with you and
produce at the time and place aforesaid (*specify documents
to be produced*).
Witness, the Honourable President, &c., the day
of , 19 .

Memo. of issue and indorsement as in Form 694.

Con. Rules, 1888, Form 117.

(*Formal parts: as in No. 403.*)

for an order that a *subpœna* may issue in this cause, directed **698** *Notice of motion for order for sub-pœna to Quebec, under C.S.C. c. 79, sec. 4.*
to A.B., C.D. and E.F., of of , in
the of , in the Province of Quebec, re-
quiring the said A.B., C.D. and E.F. to attend at the next

(c) Con. Rules 1897, Form 90.

(d) Con. Rules 1897, Form 91.

sittings of this Court to be holden at _____ on _____, the
 day of _____, for the trial of actions, as witnesses
 on the part of the plaintiff [*or*, defendant *A.W.* *Or*, to
 attend before *Y.Z.*, Esq., the Master of this Court (*or*, special
 examiner), at the _____ of _____, at such time and
 place as the said *Y.Z.*, Esq., shall appoint for taking the said
 examination of the said defendants *A.B.* and *C.D.* in this
 action]; and take notice, &c. (*Conclude as in No. 403.*)

(*Formal parts: see No. 744.*)

699

Affidavit in
 support of
 application by of
 applicant or
 his solicitor.

1. Joinder of issue was delivered herein on the _____ day
 of _____, and this action is now at issue [and notice of
 trial has been given for the next sittings of this Court to be
 holden at _____, on the _____ day of _____] (*Where
 the evidence is required on some interlocutory proceeding,
 the affidavit must be framed to suit that state of facts.*)

2. *A.B.*, *C.D.* and *E.F.* are material and necessary wit-
 nesses for me [*or*, for the *applicant*] in this action, and I
 [*or he*] cannot safely proceed to a trial of this action without
 their evidence.

3. The said *A.B.*, *C.D.* and *E.F.*, respectively reside
 at (*state residence*), in the Province of Quebec.

4. There is no action or suit pending in the said Province
 of Quebec in respect of the matters in question in this suit
 (*a*).

Sworn, &c.

(*Formal parts: as in No. 902.*)

701

Order for sub-
 poena to issue
 to Quebec.

1. It is ordered that a writ of *subpoena* [*ad testificandum
 or,—ad testificandum et duces tecum*] do issue out of and un-
 der the seal of this Court, directed to *A.B.*, *C.D.* and *E.F.*,
 of _____, in the Province of Quebec, requiring them to
 be present at the trial of this action, at the next sittings of
 this Court, to be holden on the _____ day of _____, at
 (*or as the case may require*).

(a) See C. S. C. c. 79, s. 6, printed in R. S. O. 1897, p. 876.

702

The subpoena is in the same form as No. 694, but must bear at the foot or in the margin a memorandum to the following effect:

Subpoena to
Province of
Quebec.

" Issued under special order made in Chambers this day of

(Signature.)

Clerk of ."

(Formal parts: see No. 403.)

On behalf of the _____ for an order that a writ of *habeas corpus ad testificandum* may be issued, directed to the Warden of the Central Prison (or as may be) to bring before the Justices appointed to hold the sittings of the High Court of Justice for the trial of actions at the Town of _____, to be holden on _____, the _____ day of _____, 19 _____, (or as may be necessary), to be examined as a witness for the _____ at the trial of this action (or as may be necessary) so long as his attendance as a witness shall be required.

Notice of
motion for
habeas corpus
ad testifican-
dum.

703

(Formal parts: see No. 744.)

1. Set out the state of the action, shewing that it is ready for trial, or for the taking of the evidence of the witness.

Affidavit in
support.

2. _____ is a material and necessary witness for the _____ [or, has made an affidavit in this action in behalf of the _____, or as may be the case].

3. The said _____ is a prisoner confined in the Central Prison, and by reason thereof the _____ is unable to procure his attendance as a witness in this action.

704

(Formal parts: see No. 902.)

1. Upon the application of _____ the defendant above-named, and upon hearing read the affidavit of _____ this day filed, and upon hearing counsel for the plaintiffs and defendants [no one appearing for or on behalf of the Honourable [the Minister of Justice of Canada], although duly notified of this application, as by affidavit of service of notice thereof appears].

Order for
habeas corpus
ad testifican-
dum.

705

2. It is ordered that a writ of *habeas corpus ad testificandum* may issue out of this Court on behalf of the [defendant], directed to the Warden of the [Penitentiary] at to bring , a prisoner now confined in the said [Penitentiary] before the Judge presiding at the sittings to be holden at the City of , in the Province of Ontario on the day of , 19 , at the hour of ten o'clock in the forenoon, and so from day to day until the above action is tried, to give evidence on behalf of the [defendant].

3. And it is further ordered that before execution of this said writ the defendant do pay to the said Warden of the said [Penitentiary] the expenses of bringing the said prisoner to and reconveying him to the said [Penitentiary].

4. And it is further ordered that the costs of this application and of the said writ and the execution thereof be costs in the cause.

Habeas Corpus ad Testificandum.

[Title, &c.]

706

Writ of *habeas corpus ad testificandum*. (a)

Edward the Seventh, &c. (see No. 694) to the [keeper of our prison at .]

We command you that you bring , who it is said is detained in our prison under your custody , before at on day the day of , at the hour of in the noon, and so from day to day until the above action is tried, to give evidence on behalf of the . And that immediately after the said shall have so given his evidence you safely conduct him to the prison from which he shall have been brought.

Witness, the Honourable President, &c., the day of , 19 .

Memo. of issue and indorsement as in Form 694.

Con. Rules, 1888, Form 119.

(*Title &c., as in No. 403.*)

Take notice that the plaintiff intends to examine the defendant, as a witness in this action at the trial thereof at the next sittings (*according to the notice of trial, see No. 789.*)

707
Notice of intention to examine opposite party as a witness at the trial. (b)

And further take notice that the plaintiff hereby requires the said defendant to attend for examination accordingly at the trial, pursuant to Consolidated Rule 481.

Dated, &c.

(*Signature.*)

Solicitor for [Plaintiff].

To

Solicitor for [Defendant].

Warrant for Arrest of a Defaulting Witness. (Rule 482.)

Province of Ontario,)
County of

708
Warrant for arrest of a defaulting witness. (c)

Between—A.B., Plaintiff,
and
C.D., Defendant.

To E.F.

Whereas proof has been made before me that H.N. was duly subpoenaed to give evidence on behalf of the plaintiff (*or as the case may be*), in the cause at the sittings of the Court of Assize (*or as the case may be*), at Toronto (*or as the case may be*), which commenced on the day of , 19 ; that the presence of the said H.N. is material to the ends of justice; and that the said H.N. has failed to attend in accordance with the requirements of the *subpœna*.

These are therefore to command you to take the said H.N. and to bring and have him before me at the said sittings, or before such other Judge as may be presiding thereat, there to testify what he may know concerning the matters in question in the said cause, and that you detain him in your custody until he shall have given his evidence, or until the said

(b) See Rule 481.

(c) Con. Rules 1897, Form 93.

sittings shall have ended, or until other order be made by the Court concerning him.

Given under my hand this day of A.D.
19 , at .

J. J. M.

Con. Rules, 1888, Form 202.

(*Formal parts: see No. 403.*)

709

Notice of
motion, for
order for
attendance or
committal of a
witness refus-
ing to obey
subpœna.

on behalf of the plaintiff [*or*, defendant *A.B.*], that *E.F.* who has been served with a *subpœna* to attend and be examined as a witness for the plaintiff [*or*, said defendant] before *C.D.*, Esquire, an examiner of this Court [*or*, before *C.D.*, the special examiner appointed in this cause], but has refused to attend, may be ordered to attend at his own expense, and be sworn and examined as such witness, at such time and place as the examiner shall appoint; or, in default thereof, stand committed to the gaol of . And that the said *E.F.* may be ordered to pay the costs of this application. And take notice, that in support (*&c.*, *continue as in form No. 403.*)

An affidavit in support, and the examiner's certificate of default accompany.

(*Formal parts: see No. 744.*)

710

Affidavit in
support.

1. On the of , 19 , I served *E.F.*, the person named in the *subpœna* now produced and shewn to me and marked "A," issued out of, and under the seal of this Honourable Court, by delivering to, and leaving with, the said *E.F.*, at (*state where*), in the [County] of , a true copy of the said *subpœna* and of the indorsement thereon; and I at the same time shewed to the said *E.F.* the said *subpœna* so under seal as aforesaid.

2. At the time of such service I did pay to the said *E.F.*, the sum of \$.

(*Formal parts: see No. 403.*)

711

on the part of the plaintiff [*or, defendant A.B.*], that *E.F.*, of (*residence and addition*) who had been served with a *sub-pœna* to attend and be examined as a witness for the plaintiff [*or, said defendant*], before *C.D.*, Esquire, an examiner of this Court [*or, before C.D., the examiner specially appointed for the examination of witnesses in this cause*], but has neglected or refused to attend and be examined, may be ordered to attend at his own expense, and be sworn and examined as such witness, at such time and place as the said examiner shall appoint; and in default that he may be committed to the common gaol of the County of, &c.; and that the said *EF.* may be ordered to pay the costs of this application. And take notice, that in support (*&c., as in form 403.*)

Notice of motion, for like attendance or commitment.

SECTION IV.—ORAL EVIDENCE—OATHS, AFFIRMATIONS AND DECLARATIONS OF WITNESSES.

1. *Before the Court.*

712

To the witness holding the Bible or New Testament in his hand: The evidence you shall give to the Court touching the matters in question shall be the truth, the whole truth, and nothing but the truth—So help you God.

Ordinary form of oath.

The witness then kisses the book.

713

The officer requests the witness to hold up his right hand and to repeat after him the words of the oath. No book of any kind is required.

Scotch form of oath (a)

I swear by Almighty God [as I shall answer to God at the great day of judgment (*b*)] I will speak the truth, the whole truth, and nothing but the truth.

714

To be uttered by the witness: I, *A.B.*, do solemnly and sincerely declare, that (*state in what form, and with what*

Oath of a Scotch Covenanter.

(a) Any person who desires, may be sworn in this form: See 2 Ed. vii., c. 12, s. 29.

(b) The words in brackets are part of the original form of oath, but are now frequently omitted by the judges of the Scotch Courts in administering oaths: See Stringer's Oaths and Affirmations, pp. 49, 82.

ceremony, an oath will be binding; as: holding up my right hand, and declaring to the truth, as I shall answer to Almighty God at the great day of judgment], is a form of oath that is most binding on my conscience; and (here holding up his hand) I do solemnly and sincerely declare, that the evidence I shall give to the Court touching the matters in question shall be the truth, the whole truth, and nothing but the truth [repeat the binding form; as: as I shall answer to Almighty God at the great day of judgment].

715

Affirmation
by a Quaker,
or Moravian,
Separatist, etc.

To be uttered by the witness: I, A.B., being one of the people called Quakers [or, one of the persuasion of the people called Quakers—or, of the United Brethren called Moravians, or, as the case may be], and entertaining conscientious objections to the taking of an oath, do solemnly, sincerely, and truly affirm and declare that the evidence I shall give to the Court touching the matters in question shall be the truth, the whole truth, and nothing but the truth.

716

Affirmation
by an ex-
Quaker, or ex-
Moravian.

To be uttered by the witness: I, A.B., having been one of the people called Quakers [or, one of the persuasion of the people called Quakers or, one of the persuasion of Moravians, or, as the case may be], and entertaining conscientious objections to the taking of an oath, do solemnly, sincerely, and truly declare and affirm that the evidence I shall give to the Court touching the matters in question shall be the truth, the whole truth, and nothing but the truth.

717

Interpreter's
oath.

You shall well and truly interpret and explanation make to the Court [or, the jury] and the witness of all such matters and things as shall be required of you to the best of your skill and understanding—So help you God.

The like in
Scotch form.

Deponent holds up his right hand and says: I swear by Almighty God that I will well and truly interpret and explanation make to the Court [or the jury] and the witness[es]

of all such matters and things as shall be required of me to the best of my skill and understanding.

2. *Before an Examiner or Commissioner to examine witnesses.*

718

Ordinary form of oath.

You swear that you shall true answer make to all such questions as shall be asked you [without favour or affection to either party (a)], and therein you shall speak the truth, the whole truth, and nothing but the truth.—So help you God.

(Or a form similar to No. 713 may be used.)

To be uttered by the witness: I, A.B., do solemnly and sincerely declare that [state in what form and with what ceremony, an oath will be binding; as: holding up my right hand, and declaring to the truth, as I shall answer to Almighty God at the great day of judgment], is a form of oath that is most binding on my conscience; and (here holding up his hand) I do solemnly and sincerely declare that I shall true answer make to all such questions as shall be asked me [without favour or affection to either party, (a)] and therein I shall speak the truth, the whole truth, and nothing but the truth [repeat the binding form; as: as I shall answer to Almighty God at the great day of judgment].

719

Oath of a Scotch Covenanter, etc.

To be uttered by the witness: I, A.B., being one of the people called Quakers [or, one of the persuasion of the people called Quakers—[or, of the United Brethren called Moravians, or as the case may be], and entertaining conscientious objections to the taking of an oath, do solemnly, sincerely, and truly affirm and declare that I shall true answer make to all such questions as shall be asked me [without favour or affection to either party (a)], and therein I shall speak the truth, the whole truth, and nothing but the truth.

720

Affirmation by a Quaker, or Moravian.

(a) These words are omitted where a party to the action is sworn.

721

Affirmation
by an ex-
Quaker, or ex-
Moravian.

To be uttered by the witness: I, A.B., having been one of the people called Quakers [*or, one of the persuasion of the people called Quakers—or, of the United Brethren called Moravians, or as the case may be*], and entertaining conscientious objections to the taking of an oath, do solemnly, sincerely, and truly declare and affirm that I shall true answer make to all such questions as shall be asked me, "[without favour or affection to either party (*a*)], and therein I shall speak the truth, the whole truth, and nothing but the truth.

SECTION V.—TAKING OF DEPOSITIONS BY EXAMINERS, &c.

722

Appointment
for the ex-
amination of
witnesses on a
motion pend-
ing before the
Court or in
Chambers. (*b*)

(*Short style of cause: see No. 26.*)

I hereby appoint the day of at the hour of , at my chambers, for the examination of witnesses on the part of the whose depositions are to be read on a motion [for an injunction—or *as the case may be*], now pending before the Court [*or, for (state nature of motion)*] now pending before A.B., Esquire, Local Judge of the High Court at , *as the case may be*].

Dated, &c.

E.F.,

Special Examiner (*or as the case may be.*)

723

Notice of
motion for the
appointment
of a special
examiner. (*c*)

(*Formal parts: see post, No. 403.*)

on the part of the plaintiff [*or, defendant A.B.*], that B.A., of (*address*), barrister at law [*or, one of the solicitors of this Court—or as may be*], may be appointed examiner for the purpose of taking (*state what; as thus: the examination of*

(*a*) These words are omitted where a party to the action is sworn.

(*b*) See Rule 492.

(*c*) This will only be necessary under special circumstances: see Rules 444, 477 and 485.

the (plaintiff) for discovery in this action *or*, the cross-examination of *C.D.* on his affidavit filed in this cause on the day of , 19 . *Or*, the examination of *E.F.* in support of the motion for, &c., now pending, *or* about to be made in this action].

(*Formal parts: see No. 403.*)

on the part of the plaintiff [*or*, defendant *A.B.*]:

1. That in case the defendant *J.B.* shall be resident at or near *M.*, in the colony of *V.*, or in case the examination of the said defendant can be conveniently taken at *M.* aforesaid, or in the said colony, *J.G.F.*, of *M.* aforesaid, Esquire, barrister at law, may be appointed an examiner for the examination of the defendant *J.B.* in this action on behalf of the plaintiff.

724
Notice of
motion for the
appointment
of a special
examiner of
witnesses
abroad. (d)

2. That in case the said *J.G.F.* shall die or cease to reside within the said colony of *V.*, before the taking or completion of the evidence of the defendant *J.B.*, or shall decline or be unable to take the same, *G.M.S.*, of *M.* aforesaid, gentleman, may be appointed an examiner for the examination of the said defendant.

3. That in case the defendant *J.B.* shall be resident at or near *A.*, in the colony of *S.*, or in case the examination of the said defendant can be conveniently taken at *A.* aforesaid, or within the said colony of *S.*, *J.M.S.*, of *A.* aforesaid, gentleman, may be appointed an examiner for the examination of the said defendant.

4. That in case the said *J.M.S.* shall die, or cease to reside within the said colony of *S.*, before the taking or completion of the evidence of the said defendant, or shall decline or be unable to take the same, *W.J.W.*, of *A.* aforesaid, gentleman, may be appointed examiner for the examination of the said defendant.

5. That in case the evidence of the said defendant is taken at *M.* aforesaid, notice thereof is to be given to *J.T.* and *G.H.*, both of *M.* aforesaid, or to one of them, as the agent there of the defendants *S.M.* the elder, and *S.M.* the younger.

6. And that in case the evidence of the said defendant is taken at *A.* aforesaid, notice thereof is to be given to *W.S.* and *E.G.*, both of *A.* aforesaid, or to one of them, as the agent there of the said defendants *S.M.* the elder, and *S.M.* the younger.

(d) See Rules 477 and 485.

Order for Examination of Witnesses before Trial. (Rule 485.)

725

Order for examination of witnesses before trial. (a)

In the High Court of Justice.

The Master in Chambers (*or as may be*).

(*Date.*)

Between Plaintiff,
and
Defendant.

1. Upon the application of , and upon reading the affidavit of filed, and upon hearing the solicitor [*or counsel*] for

2. It is ordered that a witness on behalf of the be examined *viva voce* (on oath or affirmation) before [*or, before* Esquire, special examiner], the solicitor or agent giving to the solicitor or agent notice in writing of the time and place where the examination is to take place.

3. And it is further ordered that the examination so taken be filed in the office of , and that an office copy or copies thereof may be read and given in evidence on the trial of this cause, saving all just exceptions, without any further proof of the absence of the said witness than the affidavit of the solicitor or agent of the as to his belief, and that the costs of this application be

See Con. Rules, 1888, Form 141.

(*Formal parts: see post, No. 403.*)

726

Notice of motion that a witness refusing to produce documents on a subpoena may be ordered to produce same. (b)

on the part of the plaintiff [*or, defendant A.B.*], that *E.F.*, of (*residence and addition*), in obedience to the *subpoena* served upon him in this cause, may be ordered to attend *C.D.*, Esquire, one of the examiners of this Court [*or, C.D.*, the examiner specially appointed for the examination of witnesses in this cause], at his own expense, at such time and place as the said examiner shall appoint, and then and there produce the several documents in the said *subpoena* specified (*or as may be*); and that the said *E.F.* may be ordered to

(a) Con. Rules 1897, Form 124.

(b) See *Bradshaw v. Bradshaw*, 3 Sim. 285.

pay the costs occasioned by his refusal to produce the said documents, and of this application. And take notice, that in support (&c., as in Form 403).

(Style of cause: as in No. 25.)

Deposition of a witness cross-examined in the above cause, before me, B.A., examiner [or, special examiner appointed by order in this cause, dated the of , 19].

727

Formal parts of deposition of a deponent cross-examined on his affidavit, before an examiner.

Sworn the day of , 19 . { E.F., cross-examined on behalf of the plaintiff [or defendant A.B.], on his affidavit filed the day of , 19 , in this cause, and being duly sworn, saith as follows:

I hereby certify that the evidence contained in this and the preceding sheets of paper was taken by me, (c) [and was afterwards read over to the witness (or, respective witnesses)], and signed by him (or, them), in the presence of the parties attending].

B.A.

(Court and style of action: as in No. 25.)

Depositions of witnesses examined in the above cause, at the times and places hereinafter mentioned, before me, B.A., examiner [or, special examiner appointed by order in this cause, dated the of , 19].

728

The like, where the examination is at different places.

1. At the in the County of
Sworn the day of , 19 . { E.F. (&c.: as in last Form.)

2. At in the County of
Sworn the day of , 19 . { G.H. (&c., as in last Form.)

I hereby certify (&c.: as in last Form).

(c) Omit all the remaining words where the evidence has been taken in shorthand.

729

Notice of motion to appoint special examiners.

(*Formal parts: see post, No. 744.*)

on the part of the plaintiff, that *G.W.A.* and *T.K.B.*, both of *S.*, in the colony of *N.S.W.*, solicitors, may be appointed examiners for the purpose of taking the examination of witnesses in this action [as to the claims of *C.D.* and *T.F.J.*]; and that the said *G.W.A.* shall alone act as such examiner: unless he shall refuse to act, or is by illness or other sufficient cause incapacitated from acting: in which case, the said *T.K.B.* shall alone act as such examiner.

730

Affidavit in support of application to appoint a special examiner.

(*Formal parts: see post, No. 744.*)

1. *Shew the necessity for the appointment of a special examiner.*

2. *Prove fitness of person proposed; as thus: A.B., of, &c., the person proposed to be appointed special examiner as aforesaid, has no interest in the matters in question in this cause; and in my judgment he is a fit and proper person to be appointed such special examiner.*

Shew means of knowledge.

SECTION VI.—EXAMINATION OF WITNESSES DE BENE ESSE.

731

Notice of motion for leave to examine a witness *de bene esse*. (*a*)

(*Formal parts: see No. 403.*)

on behalf of the plaintiff [*or, defendant A.B.*], for leave to examine *C.D.*, of (*residence and addition*), as a witness on his behalf in this cause, *de bene esse*: saving all just exceptions: [the said *C.D.* being the only witness to prove a material fact.] *If a special examiner is necessary, add:* and that *E.F.*, of (*residence and addition*), may be appointed an examiner to take such examination. And take notice (*as in No. 403*).

732

Affidavit in support of motion.

(*Formal parts: as in No. 744.*)

I, G.H., of (*place of business*), gentleman, the solicitor in this cause for the plaintiff [*or, defendant A.B.*], make oath and say as follows:

1. (*Shew the condition of the action.*)

(*a*) When the witness is over seventy, or dangerously ill, or about to go abroad, the application may be *ex parte*.—*Dan. Pr.* 5th ed. 817, 7th ed. 558, and see Rules 356 and 357. When, however, the application is made by a defendant before defence, notice must be served. *Id.*

2. *C.D.*, of (*residence and addition*), is a material witness in this cause for the plaintiff [*or, defendant A.B.*], and he cannot safely proceed by the trial of this action without his evidence (*shew also the facts intended to be proved by the witness*).

3. The said *C.D.* is upwards of years of age—*or*, in a dangerous state of health (*as the fact may be*)—*or*, about to go out of the jurisdiction of this Honourable Court and is not expected to return during the next months—*or*, the said *C.D.* is the only witness to prove [*state facts as to which it is proposed to examine witness; for example the due execution of the will of A.W., the testator in the pleadings mentioned*].

3. *If a special examiner is necessary, shew his fitness to be appointed: see No. 729.*

(*Proof of illness should also be made by an affidavit of a physician where possible.*)

(*Full or shortened style of the cause, Nos. 24, 25.*)

733

Deposition of a witness examined *de bene esse*, pursuant to an order made in the above cause, dated the day of , 19 , before me, *E.F.*, examiner [*or special examiner appointed by the said order—or by order in this cause dated the , 19 , at , this day, &c.*

Formal parts of deposition of the witness.

C.D., (*residence and addition*), being called on behalf of the plaintiff [*or defendant A.B.*], and being duly sworn, saith as follows:

I know the plaintiff, &c.

(*Except where the evidence is taken in shorthand the witness should sign the deposition, and the examiner should certify the depositions.*

Where taken in shorthand the stenographer should certify a true copy of the extension of his notes and the examiner should also sign the copy: *Rules 458 (2), and 485.*

(*Formal parts: see No. 744.*)

734

Show special grounds for the application; as thus: *C.D.*, in the order in this cause, dated the of , 19 , named, died on the day of last. He is the same .

Affidavit to enable a party to use the deposition as evidence.

person as *C.D.*, named in the paper writing marked *A.*, now produced and shewn to me (*Exhibit certificate of death or burial*), and purporting to be a copy of an entry in the Register book of deaths [*or, burials*] kept for (*describe the Register book*).

Or shew that due diligence was used to produce the witness for examination in the ordinary course; and why it could not be done.

SECTION VII.—COMMISSIONS TO TAKE EVIDENCE.

(*Formal parts: see No. 403.*)

735

Notice of motion for commission to take evidence.

On the part of the [plaintiff *or as may be*] that he may be at liberty to sue out a commission directed to Mr. *A.B.* of as commissioner on the part of the (*applicant*), for the examination *viva voce* [*or, upon interrogatories, or upon interrogatories and viva voce*] at or elsewhere in of witnesses in this action residing in the said of on behalf of all parties to this action, [*or of C.D. and E.F. as witnesses in this action on the part of the plaintiff or as may be*], and that the trial of this action be stayed until after the return of the said commission. And that the costs of the application and of the execution of the order to be made thereupon and all costs incidental thereto may be costs in the said action. [*If letters rogatory are required add following:—*And that letters rogatory may issue out of this Court directed to (*stating Court*), requesting such Court to issue the necessary process to compel the attendance of *A.B.* and *C.D.* before such Court, or such person or persons as the said Court may appoint, to be examined as witnesses under oath on the part of the plaintiff [*or, defendant*] *A.B.*]

Additional where letters rogatory are required.

(*Formal parts: as in No. 744.*)

736

Affidavit in support, by applicant or his solicitor.

1. This action is now at issue, [joinder of issue having been delivered on the day of 19, *or as may be the case*].

2. *A.B.*, *C.D.*, and *E.F.*, are (*a*) material and necessary witnesses for me [*or, the applicant*], and I [*or, he*] can not safely proceed to the trial of this action without the evidence of the said *A.B.*, *C.D.*, and *E.F.*

(*a*) Where affidavit is made by the party there may be here inserted "as I am advised by my solicitor and believe."

3. The said *A.B.*, *C.D.*, and *E.F.* reside (*state places of residences*) out of the jurisdiction of this Honourable Court.

4. The said *A.B.* and *C.D.* [are adverse witnesses, and] will not voluntarily attend to give evidence unless compelled so to do by legal process.

5. The said *A.B.* and *C.D.* are both resident within the jurisdiction of the Court (*name of Court to which the letters rogatory are to be addressed*).

6. This application is made in good faith and not for the purpose of delay nor for any improper purpose whatever.

Order for Commission to Examine Witnesses. (Rule 499.)

In the High Court of Justice.

The Master in Chambers (*or as may be*).

(*Date.*)

Between Plaintiff,
and
 Defendant.

1. Upon the application of , and upon reading the affidavit of filed, and upon hearing the solicitor [*or counsel*] for .

2. It is ordered that a commission may issue out of this Court directed to of a commissioner named by and on behalf of the and to of a commissioner named by and on behalf of the for the examination [upon interrogatories and] *viva voce* of witnesses on behalf of the said and respectively at aforesaid before the said commissioners.

[3. And it is further ordered that the do within days after service upon of the interrogatories in chief deliver to the his cross-interrogatories, and in default of his doing so the is to be at liberty to send the said commission without cross-interrogatories.]

4. And it is further ordered that days previously to the sending out of the said commission, the solicitor of the said shall give to the solicitor of the said notice in writing of the mail or other conveyance by which the commission is to be sent out.

737

Order for commission. (a)

5. And it is further ordered that within days after service of this order upon or solicitor the do deliver to the the name and place of business of agent in aforesaid whom he ha appointed to appear for upon such examination, and upon whom notice of the said examination may be served.

6. And it is further ordered that upon the execution of the said commission and the examination of the said witness and before the day of the said commission and the deposition of the witness and all proceedings taken under the said commission be without delay after the said commission shall have been executed transmitted to the office of the of the the High Court of Justice at .

7. And it is further ordered that upon the return of the said commission either party upon giving days' notice of his intention to do so, may be at liberty to open the said commission and take an office copy or copies thereof, and of the said depositions, exhibits or other proceedings returned therewith.

8. And it is further ordered that upon the return of the said commission the said upon the request of either party and upon payment of the postage therefor, shall transmit the said commission with the several proceedings returned therewith and the [said interrogatories and cross-interrogatories and] depositions taken as aforesaid, to to be by him produced at the trial of this action.

9. The costs of this order, and of the commission to be issued in pursuance hereof, and of the interrogatories, cross-interrogatories, and depositions to be taken thereunder, together with any document, copy, or extract and the official copies thereof, and all other costs incidental thereto, shall be

Con. Rules, 1888, Form 138.

(Add to preceding Form.)

738

Order for
letters rogatory. (a)

5a. And it is further ordered that letters rogatory do issue out of and under the Seal of this Court, addressed to (*nam-ing foreign Court*), requesting such Court to issue process for the purpose of compelling the attendance of the witnesses intended to be examined in this cause at aforesaid, before such person as the said Court shall appoint.

(a) See R. S. O. 1897 vol. 3, pp. xxiv., xxvi.; R. S. C. c. 140.

*Commission to Examine Witnesses. (Rules 499, &c.)**(Title, &c.)***739**

Edward, by the Grace of God of the United Kingdom of ^(b)Commission. Great Britain and Ireland and of the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India, to of commissioner[s] named by and on behalf of the [where necessary add, and to of a commissioner named by and on behalf of the] greeting: Know ye that we in confidence of your prudence and fidelity have appointed you and by these presents give you power and authority to examine [where necessary on interrogatories and] *viva voce* as hereinafter mentioned witnesses on behalf of the said and respectively at , before you [or either of you].—And we command you as follows:

1. [Both] the said [and the said] shall be at liberty to examine [on interrogatories, and] *viva voce* [on the subject matter thereof or arising out of the answers thereto] such witnesses as shall be produced on [his or their] behalf with liberty to the other party to cross-examine the said witnesses [on cross interrogatories and] *viva voce* on the subject matters thereof or arising out of the answers to such examination, the party producing any witness for examination being at liberty to re-examine him *viva voce*; and all such additional *viva voce* questions whether on examination, cross-examination, or re-examination, shall be reduced into writing, and with the answers thereto shall be returned with the said commission.

2. Not less than forty-eight hours before the examination of any witness on behalf of either of the said parties, notice in writing, signed by [one of] you [naming him where necessary], the commissioner of the party on whose behalf the witness is to be examined, and stating the time and place of the intended examination and the name[s] of the witness[es] to be examined, shall be given to the other party by delivering the notice to [name and address of the person named for this purpose] (or to a grown up person there) [where commissioners may be appointed for each party add, and shall be given also to the commissioner of the other party at the address aforesaid of such commissioner or to a grown up person for him at the said last-mentioned address, and if the commissioner of that party neglect to attend pursuant to the

notice], then you, [the commissioner of the party on whose behalf the notice is given] shall be at liberty to proceed with and take the examination of the [witness or witnesses] *ex parte*, and adjourn any meeting or meetings, or continue the same from day to day until [all] the witness[es] intended to be examined by virtue of the notice [has or have] been examined, without giving any further or other notice of the subsequent meeting or meetings.

3. In the event of any witness on his examination, cross-examination, or re-examination, producing any book, document, letter, paper, or writing, and refusing for good cause to be stated in his deposition to part with the original thereof, then a copy thereof, or extract therefrom, certified by the commissioner [or commissioners present and acting] to be a true and correct copy or extract shall be annexed to the deposition of the witness.

4. Each witness to be examined under this commission shall be examined on oath, affirmation, or otherwise in accordance with his religion by or before the [commissioners or] commissioner [present at the examination].

5. If any witness does not understand the English language (the [interrogatories, cross-interrogatories, and] *viva voce* questions, if any, being previously translated into the language with which he is conversant), then the examination shall be taken in English through the medium of an interpreter, or interpreters to be nominated by the [commissioners or] commissioner [present at the examination], and to be previously sworn according to his or their several religions, by or before the said [commissioners or] commissioner truly to interpret the questions to be put to the witness and his answers thereto.

6. The depositions to be taken under this commission shall be subscribed by the witness [*or*, witnesses] and by the commissioners [or commissioner] who shall have taken the depositions; except where the examination is taken in shorthand, in which case it shall not be necessary for the depositions to be read over or signed by the witness or witnesses, unless any of the parties so desire; but in such case a copy of the depositions in longhand, certified by the shorthand writer as correct, shall be attached to the commission and signed by the commissioner [or commissioners] who shall have taken the depositions.

7. The questions and depositions, together with any documents referred to therein, or certified copies thereof or extracts therefrom, shall be sent to the Central Office of the High

Court of Justice at Toronto (*or as the case may require*)
 on or before the day of enclosed in a cover
 under the [seals or] seal of the [commissioners or] commis-
 sioner.

8. Before you [or any of you,] in any manner act in the execution hereof, you shall [severally] take the oath hereon indorsed on the Holy Evangelists or otherwise in such other manner as is sanctioned by the form of your [several] religion[s] and is considered by you [respectively] to be binding on your [respective] conscience[s] in manner and form mentioned in the instructions herewith given.

Where more than one commissioner add, and we give you or any one of you authority to administer such oath to the other or others of you.

Witness, the Honourable President, &c., the day
 of in the year of our Lord one thousand eight hundred
 and

This commission was issued by of agent
 for of solicitor for who reside
 at ..

Instructions as to the Execution of the within Commission.

First.—See that the proper notice of examination is given to the parties concerned.

Second.—Follow all the directions and requirements of the commission strictly.

Third.—When executed, annex all the *viva voce* questions, depositions, exhibits, affidavits, and other papers firmly to the commission, enclose them all in an envelope. Commissioner should put his seal on the envelope and write his name opposite the seal.

Fourth.—Indorse the style of cause on the back of the envelope, and the word "Commission," and address it to and pay the postage on it.

Fifth.—The affidavit, affirmation or declaration of execution, to take before entering on the execution of the commission should be made, affirmed or declared by the commissioner , before any commissioner authorized to administer oaths in the Supreme Court of Judicature in England, or before a Judge of the Supreme Court of Judicature in England, or of the Court of Session or the Justiciary Court in Scotland, or in the High Court of Chancery, or the Courts

of King's Bench, Common Pleas or Exchequer in Ireland, or before a Judge of any of the County Courts in Great Britain or Ireland, within his county, or before any notary public, certified under his hand and official seal, or before any commissioner authorized to administer oaths in the High Court of Justice for Ontario, or before the mayor or chief magistrate of any city, borough, or town corporate in Great Britain or Ireland, or in any Colony of His Majesty without Canada, or in any foreign country, and certified under the common seal of such city, borough or town corporate, or before a Judge of any Court of Record or of Supreme Jurisdiction in any Colony without Canada, belonging to the Crown of Great Britain, or any dependency thereof, or in any foreign country, or, if made in the British Possessions in India. before any magistrate or collector certified to have been such under the hand of the Governor of such possession, or, if made in Quebec before a Judge or Prothonotary of the Superior Court, or Clerk of the Circuit Court, or before any Consul, Vice-Consul, or Consular Agent of His Majesty exercising his functions in any foreign place, or before a commissioner authorized by the laws of Ontario to take affidavits in and for any of the Courts of Record of the Province, for the purposes of and in and concerning any cause, matter or thing depending or in any wise concerning any of the proceedings to be had in the said Courts.

The affidavit of execution of the commission should shew the following facts:—

- 1st. The style of the Court and cause.
- 2nd. The names, residence, and addition of the deponent in full.
- 3rd. The taking of the proper oaths by the commissioner.
- 4th. The administering of the proper oaths to the witness and clerk.
- 5th. The writing down of the evidence taken, and that it was truly and correctly done.
- 6th. Identifying the questions and evidence taken, and annexed to the commission, as being those administered and taken under the commission.

Commissioner's Oath.

You shall, according to the best of your skill and knowledge, truly and faithfully, and without partiality to any or either of the parties in this cause, take the examinations and

depositions of all and every witness and witnesses produced and examined by virtue of the commission within written. So help you God.

Clerk's Oath.

You shall truly, faithfully, and without partiality to any or either of the parties in this cause, take, write down, transcribe, and engross all and every the questions which shall be exhibited or put to all and every witness and witnesses, and also the depositions of all and every such witness and witnesses produced before and examined by the said commissioners named in the commission within written, as far forth as you are directed and employed by the commission (a) to take, write down, transcribe or engross the said questions and depositions.

So help you God.

Witnesses' Oath.

You are true answer to make to all such questions as shall be asked you, without favour or affection to either party, and therein you shall speak the truth, the whole truth, and nothing but the truth.

So help you God.

Interpreter's Oath.

You shall truly and faithfully, and without partiality to any or either of the parties in this cause, and to the best of your ability, interpret and translate the oath or oaths, affirmation or affirmations which shall be administered to, and all and every the questions which shall be exhibited or put to all and every witness and witnesses produced before and examined by the commissioner[s] named in the commission within written, as far forth as you are directed and employed by the said commissioner[s], to interpret and translate the same out of the English into the language of such witness or witnesses, and also in like manner to interpret and translate the respective depositions taken and made to such questions out of the language of such witness or witnesses into the English language.

So help you God.

(a) Commissioner or Commissioners.

Return of Commission.

The return of the within commission will appear by the depositions, affidavits and papers annexed.

(Signatures of Commissioners).

Direction of interrogatories, &c., when returned by the commissioners.

*(E.g., "The Central Office, High Court of Justice,
Osgoode Hall,
Toronto.")*

Con. Rules, 1888, Form 118.
Rules 23rd June, 1894, 1346.

(Court and style of cause: as in No. 748.)

740

Interrogatories for the examination of witnesses abroad.

Interrogatories to be administered to witnesses to be produced, sworn, and examined in a certain action now depending in the High Court of Justice for Ontario, wherein *A.B.* is plaintiff, and *C.D.* and *E.F.* are defendants, on the part and behalf of the above-named plaintiff [*or, defendant—or as may be.*]

FIRST INTERROGATORY.—Do you know the parties, plaintiff and defendants, in the title of these interrogatories named, or any, or either and which of them, and how long have you known them respectively, or such of them as you do know?

(Then follow distinct interrogatories, according to the subject matter, or the witnesses to be examined; and each interrogatory concludes thus:—Declare the truth of the several matters in this interrogatory inquired after, according to the best of your knowledge, remembrance and belief.)

LASTLY, Do you know of any other matter or thing touching the matters in question in this cause that may tend to the benefit and advantage of the said [plaintiff] besides the matters in regard to which you have been interrogated? Declare the same fully and all circumstances and particulars relating thereto to the best of your knowledge as if you had been particularly interrogated in regard thereto.

ONTARIO.

741

Letters rogatory to a foreign Court.

In the High Court of Justice for Ontario,

The High Court of Justice for Ontario.

To the [United States Circuit Court, having jurisdiction at Muskegon, in the State of Michigan, one of the United States of America, (*or as may be*), or to any Court, Judge or tribunal having competent jurisdiction in the said State of Michigan], GREETING :

Whereas a certain action is pending in the said High Court of Justice for Ontario, wherein the *E. L. Company* and another are plaintiffs, and *V.A.* and others are defendants, and it has been suggested to the said Court that there is a witness residing within your jurisdiction without whose testimony justice cannot be completely done between the said parties. YOU ARE THEREFORE REQUESTED that in furtherance of justice you will, by the proper and usual process of your Court, cause such witness or witnesses as shall be named or pointed out to you by the said parties or either of them to appear before you, or some competent person by you for that purpose to be appointed and authorized, at a precise time and place by you to be fixed, and there to answer on oath or affirmation to the several questions that may be put to such witness by the parties to the said cause or either of them, and that you will cause his depositions to be committed to writing and returned to this Court, under cover duly closed and sealed up, together with these presents. AND WE shall be ready and willing to do the same by you in a similar case when required (*a*).

Witness the Honourable _____, President of
the High Court of Justice for Ontario, this _____ day of
A.D. 19 ____

(*Signature*)

Clerk of Records and Writs,
(*or other proper officer*).

(*a*) See R. S. C. c. 140, and *Wetherall v. Jones*, 19 C. L. J. 315.

SECTION VIII.—DEMURRERS BY WITNESSES.

742

Demurrer or
objection by a
witness.

Where a witness examined in a cause objects to answer any question put to him, the examiner should in the depositions set forth the question or questions put, and the demurrer or objection of the witness thereto.

(*Formal parts: see post, No. 403.*)

743

Notice of
motion that an
objecting
witness may
again attend
the examiner.

on the part of the plaintiff [*or, defendant*], that *A.B.*, a witness sworn and examined in this action on behalf of the plaintiff (*or as may be*) on the day of , 19 , before *C.D.*, Esquire, one of the examiners of this Honourable Court [*or, the examiner specially appointed to take the examination of witnesses in this cause*], may be ordered to attend at his own expense before the said examiner, at such time and place as the said examiner shall appoint, to be further examined as a witness for the plaintiff (*or as may be*) in this cause; and that the said *A.B.* may be ordered then and there to answer the question which he demurred to, or objected to answer, upon his aforesaid examination on the of , 19 , that is to say: (*state, or set out the question*); and that the said *A.B.* may be ordered to pay the costs of and occasioned by his said demurrer or objection, and of this application, and take notice that in support (&c., as in *No. 403*).

SECTION IX.—AFFIDAVITS.

General Form. (Rule 517.)

744

Affidavit (gen- In the High Court of Justice.
eral form.) (a)

Between—*A.B.*, Plaintiff,
and
C.D., Defendant. (b)

I, E.F., of (*place of residence and description or addition*)
make oath and say as follows:—

(a) Con. Rules 1897, Form 16.

(b) Affidavits should be styled in the full cause, or in the shortened style as between *A. B.* and others, plaintiffs; and *C. D.* defendant—the short style *C. v. D.* is inadmissible, and an affidavit so styled will not be received.

Or, We, *E.F.* and *G.H.*, of, &c., severally make oath and say as follows:— (*c*)

1.

2.

3. *If necessary*, And I the said *E.F.*, for myself say &c.

Sworn [*if there be more than one deponent*, by the said, *naming each deponent*] before me at the of , in the County of , this day of , A.D. .

Jurat (ordinary form).

A Commissioner for taking affidavits in the High Court of Justice in and for the County of (*d*).

Form of Jurat in the Case of an Illiterate Person.

(Rule 517.)

Sworn before me at the of , in the County Jurat (illiterate person).
of this day of , A.D. , the
said affidavit having been first read over in my presence to the deponent [*or*, the deponent *E.F.*, who seemed perfectly to understand the same and signed the same [*or* made his mark thereto] in my presence.

(*Signature*)

A Commissioner in H. C. J., &c.

(*c*) All affidavits are to be taken and expressed in the first person of the deponent, and his name at the commencement of the affidavit is to be written in full, and not designated by an initial letter merely: Rule 516. Every affidavit is to be divided into paragraphs, and every paragraph is to be numbered consecutively, and as nearly as may be is to be confined to a distinct portion of the subject: Rule 318. Affidavits are to be confined to statements of facts within the knowledge of the deponents, except on interlocutory motions, when statements of his belief, with the grounds thereof, are admissible: Rule 518.

(*d*) See *Babcock v. Bedford*, 8 C. P. 527; *Pawson v. Hall*, 1 U. C. Pr. R. 294. *Brett v. Smith*, 4b. 309.

*Oaths and Jurats.***745**

Ordinary
forms of oath
and jurat; one
deponent.

To the deponent: Is that your name and handwriting?

You swear that the contents of this affidavit by you subscribed are true—So help you God (a).

A.B.

Sworn (b) before me at the City of
Hamilton in the County of Went-
worth (*as the case may be*), this
day of , 19 .

C.D.,

A Commissioner, &c.

746

The like; two
or more de-
ponents sworn
together. (c)

To each deponent: Is that your handwriting?

To both or all: You do severally swear that the contents
of this your affidavit by you subscribed are true—So help you
God.

Sworn by the deponents A.B. and C.D.

A.B.

(*or as may be*), at (*continue as in*
last form to the end).

C.D.

(a) See Braithwaite's Pr. 379; Braithwaite's Oaths in Chan. 26, 32. A Christian swears on the Holy Evangelists; a Jew upon the Pentateuch. A complete Testament need not be used in either case. A Christian, in making oath, stands erect, holds the book in his or her right hand; the hand being uncovered, and in the case of a male person, the head being uncovered also. A Jew, in making oath, holds the book in his right hand, the hand being uncovered, but the head covered. If, however, the Jew wishes to make oath with his head uncovered, the officer cannot object to it: Braithwaite's Oaths in Chan. 25.

(b) The jurat should be written at the end of the affidavit. It is usually placed at the left-hand corner; but may be written on either side of the page, or, if necessary, in the margin; but not on a page upon which no part of the statements of the affidavit appears. It must also express the time when, and the place where, the affidavit is sworn, including the name of the city, town, &c., and county. An affidavit, or any other document sworn to, may be re-sworn at any time before it is filed. If, on re-swearing, a second jurat is given, commencing with the word "Re-sworn," then the first jurat should not be struck out, or in any manner interfered with: but if the second jurat commences with the word "Sworn"; in other words, if the jurat on the re-swearing is such as is used when a document is first sworn to: then the first jurat must be struck out, and such striking out must be authenticated by the initials of the Commissioner before whom the affidavit is last sworn: Braithwaite's Pr. 342-5.

(c) Where all the deponents are not sworn at the same time, a separate jurat must be written for each occasion on which the oath is administered: Braithwaite's Pr. 379, n. (a); Braithwaite's Oaths in Chan. 32, n. (b).

747

To the deponent: You do swear that the contents of this your affidavit are true—So help you God.

Oath of blind deponent, and jurat, where the officer reads to him the affidavit.
(d)

Sworn by the deponent A.B., at (*state where and when, as in No. 744*), before me ; I having first truly, distinctly and audibly read over to him the contents of this affidavit [*If any exhibits are referred to in the affidavit, add:* and explained to him the nature and effect of the exhibits therein referred to] : he being blind ; and he appeared to understand the same.

A.B.
[Or
The mark of
+
A.B.]

(*Signature and style of office: see No. 744.*)

748

To the witness: Is that your name and handwriting?

Oaths and jurat, where a witness reads the affidavit to a blind deponent.

You do swear that you have truly, distinctly and audibly read over the contents of this affidavit to the deponent A.B. [*If any exhibits are referred to in the affidavit, add:* and explained to him the nature and effect of the exhibits therein referred to] ; and that he appeared to understand the same, and signed his name [*or, made his mark*] to this affidavit in your presence—So help you God.

To the blind man: You do swear that the contents of this your affidavit are true—So help you God.

Sworn by the deponent A.B., at (*state where and when, as in No. 744*), C.D., the witness to the signature [*or mark*] of the deponent A.B., having been first sworn that he had truly, distinctly, and audibly read over the contents of this affidavit to the deponent A.B. [*If any exhibits are referred to in the affidavit, add:* and explained to him the nature and effect of the exhibits therein referred to] ; he being blind ; and that the deponent A.B. appeared to understand the same, and signed his name [*or, made his mark*] to this affidavit, in the presence of the deponent C.D. ;

A.B.
[Or,
The mark of
×
A.B.]
Witness to
the signature
[*Or, mark*]
of the de-
ponent A.B.:
C.D.,
of (*resi-
dence and
addition.*)

Before me (*&c.: see No.* .)

(d) In the case of a blind man or marksman, the affidavit must first be read over to him, either by the person before whom the affidavit is sworn, or by some other person. In the latter case, such person must first be sworn that he has read over the affidavit, and any exhibits thereto, to the deponent, and must attest his signature or mark: Fraithwaite's Pr. 382, and see next Form.

751

To the interpreter: Is that your name and handwriting?

You do swear that you well understand the French language (*or other language of the foreigner*), and that you will truly and faithfully interpret to the deponent *A.B.* the oath about to be administered to him—So help you God.

Oaths and jurat, where the affidavit is in a foreign language; the oath being interpreted to the deponent.

To the foreigner, through the interpreter: Is that your name and handwriting?

You swear that the contents of this affidavit by you subscribed are true—So help you God.

Sworn at (*state where, and when, as in No. 744*), by the deponent, *A.B.*, through the interpretation of *C.D.*; the said *C.D.* having been first sworn that he would truly and faithfully interpret to the said *A.B.* the oath about to be administered to him:

Before me (&c.: *see Nos. 744, 745.*)

A.B.
C.D.
of (*residence and addition.*)

752

To the translator: Is that your name and handwriting?

You do swear that you well understand the French language (*or other language in which the affidavit is written*); and that the above written is a true translation into the English language of the affidavit of *A.B.* in the French (*or as may be*) language thereunto annexed—So help you God.

Verification of a translation of the affidavit into English, in like case.(d)

C.D., of [*residence and addition, as: No. 90 King Street, in the City of Hamilton, notary public*], was sworn at (*state where, and when, as in No. 745*), that the above written is a true translation into the English language of the affidavit of *A.B.* in the French (*or as may be*) language thereunto annexed; and affixed together at the top thereof, under the [notarial] seal of the said *C.D.*, with his name thereto subscribed:

Before me (&c.; *see Nos. 744, 745, &c.*)

C.D.

(d) Where an affidavit is written in a foreign language, a translation into English, verified by a competent person, must be filed with the original: *see Braithwaite's Oaths in Chan. 35, n (h).*

753

Jurat to affidavit of a Hindoo, interpreted to him in English.

Subscribed with a seal, and sworn to by the above-named *A.B.*, at (*state where and when, as in No. 744, 751*), through the interpretation of *C.D.*; the said *C.D.* having been previously sworn that he had first translated and explained to the said *A.B.*, in the Hindoostanee language, the contents of this affidavit; that the said *A.B.* perfectly understood the contents of this affidavit; that he the said *C.D.* would truly interpret the oath about to be administered to the said *A.B.*; and that the seal used by the said *A.B.* was his own signet, where-with he always signed documents, according to the custom of his own country:

Before me (&c., see Nos. 744, 745, &c.)

754

Oath of a marksman and jurat, where the officer reads to him the affidavit.

To the deponent: Is that your mark?

You swear that the contents of this affidavit unto which you have affixed your mark are true—So help you God.

Sworn by the deponent *A.B.*, (&c.: see No. 744, last *Jurat*).

(*Signature and style of office: see Nos. 744, 745.*)

×
The mark of
A.B.

755

Oaths and jurat, where a witness reads the affidavit to a marksman.

To the witness: Is that your name and handwriting?

You do swear that you have truly, distinctly and audibly read over the contents of this affidavit to the deponent *A.B.* [*if any exhibits are referred to in the affidavit, add: and explained to him the nature and effect of the exhibits therein referred to*]; and that he appeared to understand the same, and made his mark to this affidavit in your presence—So help you God.

To the marksman: Is that your mark?

You do swear that the contents of this—your affidavit are true—So help you God.

Sworn by the deponent *A.B.*, at (*state where and when, as in No. 744*), *C.D.*, the witness to the mark of the said *A.B.*, having been first sworn that he had truly, distinctly and audibly read over the contents of this affidavit to the deponent, *A.B.* [*If any exhibits are referred to in the affidavit, add: and explained to him the nature and effect of the exhibits therein referred to*], and that the deponent *A.B.* appeared to understand the same, and made his mark to this affidavit in the presence of the deponent *C.D.*:
before me (&c., *No. 744, 745.*)

The mark of

×
A.B.

Witness to
the mark
of the said
A.B.: C.D., of
(*Residence
and
addition*).

To the deponent: Is that your name and handwriting ?

756

Oath with
uplifted hand.

To be uttered by him: I, *A.B.*, do solemnly and sincerely declare that [*state in what form and with what ceremony an oath will be binding; as: holding up my right hand, and declaring to the truth of this my affidavit, as I shall answer to God at the great day of judgment*], is a form of oath that is most binding on my conscience; and I do solemnly and sincerely declare that the contents of this my affidavit are true [*repeat the binding form; as: as I shall answer to God at the great day of judgment*].

Sworn before me (&c.: *see Nos. 744, 745*).

The Commissioner requests the deponent to hold up his right hand and repeat the words of the oath after him: I swear by Almighty God [*as I shall answer to God at the Great Day of Judgment (b)*] that the contents of this my affidavit are true.

757

Scotch oath to
affidavit (a)

(a) Any person is entitled to be sworn in this manner. See 2 Ed. 7, c. 12, s. 29. No book of any kind is required.

(b) The words in brackets, though formerly used, are now generally omitted in the Scotch Courts: Stringer's Oaths and Affirmations, pp. 49, 82.

758

Jurat of
affidavit
sworn out of
jurisdiction
under R.S.O.
1897, c. 73, s.
37. (a)

1. Sworn, &c. (*as in No. 744*).

A.B.,

A Commissioner for taking Affidavits in and for
the Courts of Ontario.

2. *Or*,

A.B.,

A Commissioner authorized by the Lord Chan-
cellor to administer oaths in Chancery in
England at (*Place where affidavit sworn*).

3. *Or*, Sworn at , this day of , before me,
A.B., one of the Justices of the Court of , having supreme
jurisdiction in the Colony of . In testimony whereof
I have hereunto set my hand and affixed my seal. (b)

4. *Or*, Sworn before me, A.B., the Mayor (*or other Chief
Magistrate*) of the City (*or Borough, or Town Corporate*)
of , at the said City [*or Borough*], of
this day of , 19 . In testimony whereof I have
hereunto set my hand and caused the common seal of the said
City [*or Borough, &c.*], to be hereunto affixed.

A.B., [L.S.]

Mayor (*or as may be*) of .

5. *Or*, Sworn before me, A.B., a Notary Public in and for
the [State of Michigan, *or as may be*], at , in the said
State of Michigan, this day of , 19 . In
testimony whereof I have hereunto set my hand and affixed the
seal of my office.

A.B., [L.S.]

Notary Public in and for State of Michigan.

6. *Or*, Sworn before me, A.B., His Britannic Majesty's
Consul [*or, Vice-Consul, or Acting Consul, or Pro-Consul,
or Consular Agent*] at [the City of], at the said [City
of], this day of , &c.

A.B.,

His Britannic Majesty's Consul, at
(*or as may be*.)

(a) Where the deponent is illiterate, &c., the jurats should be
altered to suit the case, as in preceding forms.

(b) See R. S. O. 1897, c. 73, sec. 38.

*Affirmations.***759***To the affirmant:* Is that your name and handwriting?

Interrogation of affirmant as to objections by him to being sworn.

Do you object to being sworn on the ground that you have no religious belief, or on the ground that the taking of an oath is contrary to your religious belief?

By the affirmant: I, A.B., of _____ do solemnly, sincerely and truly declare and affirm that the contents of this my affirmation are true (c).

Affirmation by him.

*(Title of cause or matter: as in No. 744.)***760**

I, A.B., of _____ being [or, having been one of the people called Quakers, or, of the United Brethren called Moravians, or as the case may be] and entertaining conscientious objections to the taking of an oath, do solemnly, sincerely and truly declare and affirm as follows:

Affirmation by person entertaining conscientious objections to an oath.

Conclude as follows:—

Affirmed before me at
the _____ of _____ in the
County of _____, this _____ day
of _____, A.D. 19 _____

A.B.

(Signature)

A Commissioner, etc.

*(Title of cause or matter: as in No. 744.)***761**

I, A.B., of, &c., make oath and say, and I, C.D., of, &c., do solemnly, sincerely and truly affirm and declare that the taking of an oath is, according to my religious belief, unlawful, and I, the said C.D., do solemnly, sincerely and truly affirm and declare as follows:

Joint affidavit and affirmation.

And first I, the said A.B., for myself, say:

- 1.
- 2.

And I, the said C.D., for myself, say:

- 3.
- 4.

(c) Where the affirmant is an illiterate person, or blind, deaf, dumb, or a foreigner unable to speak English, &c., the affirmation should be altered to suit the circumstances in accordance with the preceding forms of jurats.

And we the said *A.B.* and *C.D.* further severally say :

5.

6.

And I, the said *C.D.*, for myself, say :

3.

4.

Sworn by the said *A.B.*, and affirmed by the said *C.D.*
(*&c.*, see preceding Forms), at (State where, and
when, as in Nos. 744, 745.)

(Short title of cause or matter.)

762

Memorandum
of identity of
exhibit.

This is the exhibit, marked A, referred to in the affidavit
[or, affirmation] of *A.B.* [and *C.D.*], sworn [or, affirmed] in
this cause [or, matter] before me [if not by all the deponents
or affirmants, add: by the said *A.B.*], this day of , 19 .

E.F.,

A Commissioner, &c.

(Short style of cause.)

763

Notice of fil-
ing affidavit
or affirmation.

Take notice that I have this day filed an affidavit [or
affirmation] herein of *A.B.* [or, an affidavit of each of the
following persons, namely: *A.B.*, *C.D.* and *E.F.*, &c.—or as
may be].

Dated, &c.

Yours, &c.,

To

A.B.,

Solicitor.

764

Notice of in-
tention to
read an affi-
davit, or affir-
mation, al-
ready filed.

(Formal parts: see No. 763.)

Take notice that the plaintiff (*or as may be*) intends to
read, on the hearing of the petition presented by him in this
cause [or, matter] on the , 19 , [or, on the motion
to be made in this cause [or, matter] pursuant to the notice
given on his behalf on the , 19 , *or as may be*], the
affidavit [or, affirmation] of *A.B.*, filed in this cause [or,
matter] on the , 19 . (*Conclude as in No. 763*).

(*Formal parts: see No. 744.*)

765

Affidavit of service of a notice of motion. (a)

1. On , the day of , 19 , [before four o'clock in the afternoon—or as may be—of that day], I served (*describe the person or persons required to be served; as thus:*

A.B., the defendant [*or*, one of the defendants] in this action,

Or, A.B., who, by an order dated the day of , 19 , has liberty to attend the proceedings in this action [*or*, matter],

Or, A.B., in the order made in this action [*or*, matter], dated the day of , 19 , named,

Or, A.B., of (*residence and addition*),

Or, Mr. C.D., who acts as solicitor [*or*, agent] in this action [*or*, matter] for the plaintiff, &c.

Or, each of the following persons, that is to say:

(1) *A.B.*, one of the defendants in this action;

(2) *Mr. C.D.*, who acts as solicitor in this action for the plaintiff; and (3) *Mr. G.H.*, who acts as agent in this action for *L.M.*, who, by an order dated, &c., has liberty to attend the proceedings herein.

or as may be), with the notice of motion now shewn to me and marked A, by delivering a true copy of the said notice to, and leaving the same with (*describe the person or persons on whom, and where, service was effected; as thus:*

the said *A.B.*, personally, at (*state where*), in the [County] of ,

Or, the said *A.B.*, personally, at (*state where*), in the [County] of , and the said *C.D.*, personally, at &c.

Or, each of the following persons, that is to say: (1) the wife of the said *A.B.*, at his dwelling-house, situate at (*state where*), in the [County] of ;

(2) the clerk of the said *C.D.*, at the office of the said *C.D.*, situate at, &c.; and (3) the servant of the said *G.H.*, at the address for service of the said *G.H.*, situate at, &c.)

(*Where service effected on a solicitor in the action who has refused to give an admission, add:)* at the time of effecting

(a) Where service is effected on a solicitor, the service is usually proved by his admission or acceptance of service indorsed on the notice of motion: Rule 328. If for any reason he decline to give such admission, then an affidavit of service is necessary.

such service as aforesaid, I demanded of the said *A.B.* an admission of such service, but he refused to give any such admission.

766

Affidavit of
service of a
judgment or
order.

(*Formal parts: see No. 744.*)

1. On , the day of , 19 , [before four o'clock in the afternoon—or as may be—of that day], I served (*describe the person or persons required to be served; as thus:*

A.B., the defendant [*or*, one of the defendants] in this action,

Or, A.B., who, by an order dated the day of , 19 , has liberty to attend the proceedings in this action [*or*, matter],

Or, A.B., who is named in the order dated the day of (*order served*), hereinafter mentioned,

Or, Mr. C.D., who acts as solicitor [*or*, agent] in this action [*or*, matter] for the plaintiff, &c.,

Or, each of the following persons, that is to say: (1) *A.B.*, one of the defendants in this action; (2) *Mr. C.D.*, who acts as solicitor in this action for the plaintiff; and (3) *Mr. G.H.*, who acts as agent in this action for *L.M.*, who, by an order dated, &c., has liberty to attend the proceedings herein.

(*or as may be*), with a judgment [*or*, an order] made in this action [*or*, matter], dated the day of , 19 , and now produced and shewn to me and marked A, by delivering a [true, *or*, an office] copy of the said judgment [*or*, order] to, and leaving the same with (*describe the person or persons on whom, and the place where, service was effected, as in No. 765*).

2. At the time of the aforesaid service thereof, I shewed to the person [*or*, to each of the persons] to whom such true [*or*, office] copy of the said judgment [*or*, order]. was delivered, as aforesaid, the said original judgment [*or*, order].

(*If order indorsed with notice under Rule 203 or 660, add:*)

3. I further say that upon the copy [*or*, upon each of the several copies] of the said judgment [*or*, order] so served by me on the said as aforesaid was indorsed a true copy of the notice indorsed on the said original judgment [*or*, order], in the words following: [Take notice, First, &c., *or* "If you wish," &c.].

(If the copy served was an office copy, add:)

4. I further say that the said office copy [or, each of the said office copies] so served as aforesaid purported to be authenticated by the signature of the Clerk of Records and Writs of this Court [or, Deputy Clerk of the Crown, or Local, or Deputy Registrar of this Court at] at the foot thereof, and that each page of the said office copy [or, copies] was stamped with a stamp similar to the one which I now look upon in the margin of this affidavit.

(Formal parts: see ante, No. 744.)

1. On , the day of , 19 , [before four o'clock in the afternoon—or as may be—of that day], I served (de-
767 Affidavit of service of a petition.

A.B., the defendant—or, one of the defendants—in this action.

Or, A.B., who, by an order dated the day of , 19 , has liberty to attend the proceedings in this action [or, matter],

Or, A.B., in the order made in this action [or, matter], dated the day of , 19 , named,

Or, A.B., who is named in the note at the foot of the petition hereinafter mentioned,

Or, Mr. C.D., who acts as solicitor [or, agent] in this action [or, matter] for the plaintiff, &c.

Or, each of the following persons, that is to say: (1) A.B., one of the defendants in this action; (2) Mr. C.D., who acts as solicitor in this action for the plaintiff; and (3) Mr. G.H., who acts as agent in this action for L.M., who, by an order dated, &c., has liberty to attend the proceedings herein.

or as may be), with the petition now produced and shewn to me, marked A, by delivering a true copy of the said petition to, and leaving the same with (describe the person or persons on whom, and where, service was effected, as in No. 765).

2. I further say that upon the said copy [or, upon each of the said copies] of the said petition so delivered by me to the said as aforesaid was indorsed a true copy of the notice indorsed on the said exhibit A, addressed to (name the parties), whereby they were informed that the said petition would be heard on (state the time) at (state the place), and

that if they did not appear on the said petition, at the said time and place, the Court might make such order, on the petitioner's own shewing, as should appear just.

3. At the time of the aforesaid service thereof, I shewed to the person [*or, to each of the persons*] to whom such true copy thereof was delivered as aforesaid, the said original petition, with the said notice thereon.

4. *If so:* At the time of such service I did also tender to the said the sum of \$5 for his costs of the said petition.

5. *If so:* Upon the copy of the said petition so served upon the said was indorsed a notice in the words or to the effect following: "If you appear upon the hearing of the said petition in person, or by [*solicitor or counsel*] the petitioner [*s*] will object to your being allowed any costs as against the petitioner [*s*]." (a)

(*Formal parts: see No. 744.*)

768

Affidavit of service of a notice, notice of motion, or order, on a substitute.

1. On , the day of , 19 , [*before four o'clock in the afternoon—or as may be—of that day*], I served (*describe the person or persons required to be served, as in No. 765*), with a (*describe the notice or other document served, as in No. 765 or 766*), by delivering to, and leaving with (*name of substitute*), personally, at (*state where*), in the [*County*] of , a true copy of the said notice (*or as may be—see Nos. 765, 766*).

2. *State production of original order, as in par. 2 of No. 766, when applicable.*

3. The said (*substitute*) is the person of that name who is mentioned in the order made in this action [*or, matter*], dated the day of , 19 , now shewn to me and marked B, and at the time of the aforesaid service on the said (*substitute*), I also served him with the last mentioned order, by delivering to and leaving with him a true copy of such order, and I at the same time produced and shewed to him such original order (*If order served was indorsed under Rules 203-219 or 660, add paragraph 3 of Form 766*).

(a) See Rule 1153.

(Formal parts: see No. 744.)

769

1. I, _____, did on the _____ day of _____, personally serve the above named _____ with a true copy of the _____ now shewn to me, marked with the letter _____, by delivering to and leaving with the said _____, on the day last aforesaid, at _____, in the County of _____, the said copy.

Affidavit of service where it is necessary to exhibit original of paper served.

2. At the time of effecting such service I did produce and shew unto the said _____ the original of the said paper so served as aforesaid, and which said original is marked as aforesaid with the said letter _____.

3. To effect such service I necessarily travelled _____ miles.

770

Between—A.B. and another _____ Plaintiffs,
and _____
C.D. and others _____ By writ.
and _____
E.F., made a party in the Master's office _____ Defendants.

Affidavit of service of notice under Rule 746. (b)

I, _____, of _____, in the County of _____ (addition), make oath and say as follows:

1. That I did on the _____ day of _____, one thousand nine hundred and _____, personally serve the above-named E.F. with a true copy of the notice to incumbrancers in this cause, now shewn to me, and marked Exhibit A, by delivering a true copy of the same to and leaving the same with the said E.F., at _____, in the County of _____.

2. That I necessarily travelled _____ miles to effect such service as aforesaid.

Sworn, &c.

(Formal parts: see No. 744.)

771

I, _____, of _____, in the County of _____, (addition), make oath and say:

Affidavit of service of judgment.

1. That I did, on the _____ day of _____, personally serve the above-named _____ with the judgment [or, order] of this Honourable Court, made in this cause, bearing date the _____

(b) Where service of the appointment under Rule 748—being the Form No. 986—is required to be proven, the affidavit must be varied accordingly.

day of _____ and now shewn to me and marked "A," by delivering to and leaving with the said _____ a true copy of the said judgment, and at the same time producing and shewing to him the said original judgment, on which copy, when so served as aforesaid, was indorsed a memorandum in the words following: "If you, the within named, neglect to obey this judgment [*or*, order] by the time therein limited, you will be liable to be arrested by the sheriff, and you will also be liable to have your estate sequestered for the purpose of compelling you to obey the same judgment, without further notice." (*a*).

(When an office copy is served, see No. 766.)

772

Affidavit of
service of in-
junction order

(Formal parts: see No. 744.)

I, A.B., &c.

1. I did, on the _____ day of _____, serve personally the above-named _____ with a true copy of the injunction order issued in this action and hereunto annexed, by delivering to and leaving the said copy with the said _____ at _____, in the County of _____.

2. At the time of such service I exhibited to the said _____ the original injunction order, now shewn to me and marked "A."

3. To effect such service I necessarily travelled _____ miles.

(Formal parts: see No. 744.)

773

Affidavit of
service of
subpœna.

1. I did, on the _____ day of _____, at _____, serve personally R.S. and F.G., named in the annexed writ of subpœna now shewn to me and marked A, with the said annexed writ of subpœna in this cause, by delivering to and leaving with each of them, the said R.S. and F.G., a true copy of the said subpœna, and I at the same time exhibited to each of them the original writ of subpœna, under the seal of this Honourable Court.

(a) In *Berry v. Donovan*, 21 Ont. App. at p. 31, Maclellan, J.A., expressed the opinion that the indorsement is necessary: *Sed quære* as the party in default can no longer be committed without a motion.

2. At the time of such service I paid to the said *R.S.* and *F.G.* the sum of each as and for their witness fees in this cause.

3. To effect such services I necessarily travelled miles.

(*Formal parts: see No. 744.*)

1. I was present on the day of , and saw sign [seal] and deliver the paper-writing [*or, deed*] dated, &c., produced and shewn to me at the time of swearing this my affidavit, and marked with the letter .

774
Affidavit of the execution of a deed or other document by an attesting witness.

2. The name or signature “ ” thereto set and subscribed as the party executing the said [paper *or deed*], is of the proper handwriting of the said , and the name “ ” set and subscribed as the person witnessing the execution thereof by the said is of the proper handwriting of me, this deponent.

3. The said was at the time of the execution of the said [paper *or deed*] well known to me.

(*Formal parts: see No. 744.*)

1. I am well acquainted with the handwriting of the defendant *John Smith*, having often seen him write.

2. I believe the name “*John Smith*,” set and subscribed at the foot of the indenture dated, &c., and purporting to be made between the said *John Smith*, &c., produced to me at the time of making this my affidavit, marked with the letter , is of the proper handwriting of the defendant *John Smith*.

775
Affidavit of execution of a deed by a person not a witness.

3. I am also well acquainted with the handwriting of *John Roe*, of, &c., and I say that I believe the name “*John Roe*,” set and subscribed to the said indenture as the attesting witness to the execution thereof by the said *John Smith*, is of the proper handwriting of the said *John Roe*.

DECLARATIONS.

776Statutory
declaration.(a)DOMINION OF CANADA
Province of Ontario
County of

To Wit: }

In the matter of

I, of in the Count of
Do solemnly declare that*(Set out the facts as in an affidavit.)*

And I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of "THE CANADA EVIDENCE ACT, 1893."

Declared before me at the
of in the Count of
this day of A.D. 19 . }

A Commissioner, &c. [*or* Notary Public].**777**Declaration
by declarant.

You declare that the contents of this declaration by you
subscribed are true.

(a) See 56 Vict. c. 31 (D.).

CHAPTER XI.

TRIAL.

SECTION I.—MOTIONS TO CHANGE THE PLACE OF TRIAL.

(*Formal parts: see No. 403.*)

on behalf of the plaintiff [*or*, defendant], for an order changing the place of trial of this action from the [City of Toronto] to the [Town of Cornwall]; and take notice, that upon and in support of such application (*&c., as in No. 403.*)

778

Notice of
motion to
change the
place of trial.

(*Formal parts: see No. 744.*)

1. (*Shew that the action is at issue.*)

2. The plaintiff's cause of action herein (if any) arose wholly in the County of [Stormont].

3. In order to prove my defence in this cause it will be necessary for me to subpoena at least [ten] witnesses, all of whom are material and necessary witnesses on my behalf, and each of them resides either in, or within [five] miles of, the said [Town of Cornwall].

4. I verily believe that all the witnesses for the plaintiff also reside either in, or within [ten] miles of, the said [Town of Cornwall].

5. The said [Town of Cornwall] is distant miles from the said [City of Toronto] and the railway fare from [Cornwall to [Toronto] is \$.

6. The expense of subpoenaing my said witnesses to Toronto will be greatly in excess of the expense of subpoenaing them to the said [Town of Cornwall], and I believe from a calculation which I have made that such extra expense will amount to the sum of \$ at least.

7. This action can be much more conveniently tried at the said [Town of Cornwall] than at the said [City of Toronto], and at much less expense.

8. This application is made in good faith, and not for the purpose of delay.

779

Affidavit in
support of
motion by a
defendant.

780

Another form.

(Formal parts: see No. 744.)

3. *A.G.*, Esquire, the Sheriff of the County of ; *D.E.*, Esquire, the Registrar of the County of ; *F.R.*, Esquire, the Treasurer of the said County of ; and Mr. *A.B.*, the Town Clerk of the Town of Cornwall, are each and all material and necessary witnesses on my behalf, and I cannot safely proceed to a hearing of this cause without the evidence of the said several parties.

4. I am informed by the said parties, and believe that if they are compelled to attend the sittings of this Court at Toronto, it will materially interfere with the due discharge of their duties as public officers as aforesaid, and will be a great inconvenience to the public.

5. The said parties all reside in the said [Town of Cornwall], and I believe this cause can be quite as conveniently tried at the said [Town of Cornwall] as at the [City of Toronto].

6. This application is made in good faith, and not for the purpose of delay.

*(Formal parts as in No. 902.)***781**

Order changing place of trial.

1. It is ordered that the place of trial of this action be changed from the to the .

2. And it is further ordered that the costs of this application be costs in the cause [*or*, costs in the cause to the defendant, *or* be paid by the plaintiff to the defendant in any event of this action, *or as may be ordered*].

SECTION II.—MOTIONS TO POSTPONE TRIAL.

*(Formal parts: see No. 403.)***782**

Notice of motion to postpone trial.

On the part of the that the trial of this action may be postponed until the next sittings of this Court for the trial of actions at the [Town] of .

783

Affidavit in support of motion to postpone trial.

(Formal parts: see No. 744.)

I, &c., the above-named defendant, make oath and say as follows:

1. Notice of trial was on the day of 19 ,
served by the plaintiff herein for the sittings of the High
Court of Justice for the trial of actions to be holden at
on the day of of .

2. is a necessary and material witness for me in
this action, and I am advised by my solicitor, and believe
that I can not safely proceed to the trial of this action with-
out the testimony of the said .

3. The said has been absent from this Province
since but his return is expected by his family and
friends in about three weeks. The said is a commercial
traveller. He is at present travelling through the United
States of America, but his exact whereabouts is not known,
as he is not staying for any length of time at any one place
and I cannot secure his attendance in time for the trial of
this action on .

4. The application on my behalf to postpone the trial
is made *bona fide* and not for the purpose of delay merely,
nor for any other improper purpose.

(Where it is material on the application to shew the mat-
ters in issue in the action, an affidavit of the solicitor verifying
copies of the pleadings should also be made.)

SECTION III.—JURY NOTICE—SPECIAL JURY, &C.

Jury Notice. (*Jud. Act, 1895, s. 111*).

In the High Court of Justice.

Between—*A.B.*, Plaintiff,
and
C.D., Defendant.

“The plaintiff [*or one or more of them, or the defendant,
or one or more of them, as the case may be*] requires that the
issues in this cause be tried [*or, the damages in this cause be
assessed*] by a jury.”

X.Y., Plaintiff's Solicitor (*or as the case may be*).

To

(a) Con. Rules 1897, Form 64. As to when this notice is to be
given, see *Jud. Act. (R. S. O. 1897 c. 51) s. 106*.

785Special jury.
Venire.*Venire Facias Juratores.*ONTARIO: }
County of }
To Wit: }

Edward the Seventh by the grace of God of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the seas, King, Defender of the Faith, Emperor of India:

To the Sheriff of the County of

Greeting:

We command you that you cause to come before us at the on the twelve free and lawful men of the body of your County, qualified by law, by whom the truth of the matter may be better known; and who are in no wise akin either to the plaintiff or to the defendant, to make a certain jury of the country, between the parties aforesaid, in a certain action between them in Our High Court of Justice because as well the said plaintiff as the said defendant between whom the matter in variance is, have put themselves upon that Jury; and have there then the names of the jurors and this writ.

Witness the Honourable President of our High Court of Justice at the day of in the year of our Reign.

(Signature.)

Clerk of the Crown and Pleas, or Clerk of Records and Writs (or other proper officer).

Indorsement thereon. (a)

Mr. Sheriff:

You are hereby required to return a special jury on the within writ.

Dated this day of A.D. 19.

Yours, &c.,

(Signature.)

Solicitor for the

786

Sheriff's appointment to strike special jury. (b)

(Court and style of cause: see No. 25, &c.)

I hereby appoint the day of A.D. 19, for striking the special jury, in obedience to the within

(a) To be indorsed on the writ of *venire facias*. See R. S. O. 1897 c. 61, s. 116.

(b) R. S. O. 1897 c. 61, s. 116.

writ, at o'clock in the noon at [the Sheriff's
office in the City Hall, Toronto, *or as may be*].

(*Court and style of cause as in No. 786.*)

Take notice that the has sued out a writ of *venire* **787**
Notice of writ
and appoint-
ment. (c)
facias herein for the purpose of having this action tried by
a special jury, and that the Sheriff of the [City] of [To-
ronto] has appointed the day of A.D.
19 , at the hour of o'clock in the noon for striking
such special jury.

Dated, &c.

A.B.

[Plaintiff's] Solicitor.

To C.D.,

(Defendant's) Solicitor.

SECTION IV.—MOTION FOR TRIAL BY A REFEREE.

(*Formal parts as in No. 403.*)

On the part of the for an order that this action [or, **788**
Notice of
motion for
trial of action
by a referee.
all the questions in this action] be tried by Mr.
Official Referee.

SECTION V.—NOTICE OF TRIAL.

Notice of Trial No. 1 (General). (Rule 538).

In the High Court of Justice.

Between—A.B., Plaintiff,

and

C.D., Defendant.

789
Notice of
trial (general).
(d)

Take notice of trial of this action [or, the issues in this
action ordered to be tried] at for the day of
next.

X.Y., Plaintiff's Solicitor (*or as the case may be*).

Dated, &c.

To Z., Defendant's Solicitor (*or as the case may be*).

Con. Rules, 1888, Form 27.

(c) To be served by the solicitor of the party who has sued out
the *venire facias*: see R. S. O. 1897 c. 61, s. 117.

(d) Con. Rules, 1897, Form 65.

Notice of Trial No. 2 (Toronto non-jury sittings). (Rule 542.)

790

Notice of trial (Toronto non-jury sittings). (a)

In the High Court of Justice.

Between—A.B., Plaintiff,
and
C.D., Defendant.

Take notice that this action [*or, the issues in this action ordered to be tried*] was [*or, were*] set down on the day of , 19 , for trial at the Toronto non-jury sittings.

Dated, &c.

X.Y.,
Plaintiff's Solicitor,
To Z., Defendant's Solicitor. (*or as the case may be*).
(*or as the case may be*).

Rule 1277a.

SECTION VI.—VIEW BY THE JURY.

(*Formal parts as in No. 744.*)

791

Affidavit to obtain order for a view.

I, &c., solicitor for the , make oath and say as follows:

1. This is an action (*state nature of the action*).
 2. On behalf of the it is considered necessary [*or expedient*] that a view of the property in question be had by the jury.
 3. (*State circumstances shewing necessity for a view.*)
 4. The said , the place at which a view is desired to be made is distant from (*the place where the office of the Sheriff is*) about miles.
- Sworn, &c.

(*Formal parts as in No. 902.*)

792

Order for a view.

1. It is ordered that a special writ of *venire facias* and *distringas* do issue out of this Court directed to the Sheriff of the County of according to the Statute in that behalf commanding him to have the jury, or six or more of the

jury (or as many more of them as he shall think fit) (b) summoned and impannelled to try the matters in question between the parties herein, to take a view of the place in question herein on the day of at o'clock in the noon, and that X. Y. on the part of the plaintiff, and S.T. on the part of the defendant, shall shew the place in question to those jurors, but that no evidence shall be given on either side at the time of taking the said view.

2. And the said Sheriff shall return the names of such of the said jurors as shall view the said place to the Clerk of Assize [or Local Registrar] for the County of .

3. And it is further ordered that the , his solicitor or agent, shall deposit in the hands of the said Sheriff the sum of \$ for payment of the expenses of the said view, and if such sum shall be more than sufficient to pay the expenses of the said view, the surplus shall be forthwith returned to the 's solicitor, and if such sum shall not be sufficient to pay such expenses the deficiency shall be forthwith paid by the said 's solicitor to the said Sheriff.

SECTION VII.—MARKING EXHIBITS—CERTIFICATE AFTER TRIAL, &C.

793

Marking of exhibits (c)

Mode of Marking Exhibits at the Trial. (Rule 555.)

No.

In the High Court of Justice.

(*Short style of cause.*)

This Exhibit the (property of) is produced by the plaintiff (*or, defendant as the case may be*), this day of , 19 .

A.B.,

[Registrar, or Dep. Clerk, or Local Registrar,
or as may be.]

794

List of exhibits at trial.
(d)

Schedule of Exhibits. (Rule 556.)

In the High Court of Justice.

Jones v. Smith.

List of exhibits put in at the trial of this action at the day of , 19 .

(b) See R. S. O. 1897 c. 61, ss. 131, 132, 133.

(c) Con. Rules 1897, Form 208.

(d) Con. Rules 1897, Form 209.

MARKING EXHIBITS—CERTIFICATE AFTER TRIAL, ETC.

At the trial of this action at [Cornwall], the 4th May,
19 .

Plaintiff's Exhibits.

- (1) Patent.
- (2) Deed, Jones to Smith.
- (3) Bundle promissory notes (*six in all*).

Defendant's Exhibits.

- (4) Records of proceedings at Lodge of A.O.U.W.
- (5) Will of Arthur Brown.

Signature of Officer.

Form of Certificate of Officer after Trial. (Rule 559.)

(*Title, &c.*)

795
Certificate of
officer after
trial. (a)

I certify that this action was tried before the Honourable
Mr. Justice [and a special jury of the County of ,
on the days of , 19 , in presence of counsel
for and [if so, add: no one appearing for .]

[The jury found (*state findings*).]

(*If the Judge give instructions as to the judgment there-
on, add*), And the said Judge directed, &c. (*as the case may
be*).

Dated, &c.

Signature of Officer.

[Registrar, or Deputy Clerk, or
Local Registrar, or as may be.]

Con. Rules, 1888, Form 213.

(a) Con. Rules 1897, Form 207.

CHAPTER XII.

JUDGMENTS.

SECTION I.—DRAWING UP AND SETTLING JUDGMENTS.

(*Court and style of action, as in No. 25 or 26.*)

796

I hereby appoint the day of , 19 , at Appointment
the hour of o'clock, in the noon, at my Cham- to settle judg-
bers [*or, office*] at Osgoode Hall, Toronto [*or, in the Court* ment.
House , at , in the of], to
[settle the judgment pronounced at the trial herein, *or as*
may be the case], and let all parties then attend.

Dated this day of , 19 .

(*Signature.*)

Registrar.

(*or as may be.*)

In the High Court of Justice.

A. v. B.

[*Or, In the matter of A.*]

797

I appoint , the day of , 19 , Registrar's
at o'clock in the forenoon, at, &c., to [settle the minutes of, appointment
or, to pass] the judgment [*or, order*] pronounced in this cause to settle draft
[*or, matter*] on the day of , of, or to pass,
a judgment or
order.

C.D., Registrar.

(*Formal parts: see No. 400.*)

798

on the part of the plaintiff [*or, defendant, A.B.*], that the Notice of
minutes of the judgment [*or, order*] pronounced in this cause motion to vary
(*as may be*), on the day of , 19 , as minutes.
settled by the Registrar, may be varied or altered in the re-
spects following, namely: (*specify the particular matter to*
be added, or altered). And take notice (*as in No. 400*).

(*Formal parts: see post, No. 403.*)

799

Notice of motion to return engrossment of judgment or order.

on the part of the plaintiff, that Mr. A.B., the solicitor in this cause for the defendant C.D. (*or as may be*), may be ordered, within days, to produce to, and leave with, E.F., Esquire, the Senior Registrar of this Honourable Court, the minutes of the judgment [*or, order*] pronounced in this cause (*as may be*) on the day of , 19 , as settled by the said Registrar, to the intent that the same may be duly passed and entered; and that the said A.B. may be ordered to pay the costs of this application. And take notice (*as in No. 403*).

800

Notice of motion to enter judgment order *nunc pro tunc*.

(*Formal parts: see post, No. 400.*)

on behalf of the plaintiff (*or as may be*) that the judgment [*or, order*] pronounced in this action [*or, matter—as may be*], on the , 19 , may be ordered to be dated and entered as of the day of . And take notice (*as in No. 400.*)

801

Notice of motion to rectify a judgment or order.

(*Formal parts, as in No. 400.*)

On the part of the , that the judgment pronounced [*or, order made*] in this action on the day of , 19 , may be rectified or corrected in the following respects, namely (*specify the matters to be corrected*).

SECTION II. — JUDGMENTS BY DEFAULT AND OTHER JUDGMENTS OBTAINABLE *Ex parte*

Default of Appearance or Defence in case of Liquidated Demand. Rules 575, 587.

802

Judgment by default of appearance or defence. (a)

In the High Court of Justice.

Between—A.B., Plaintiff,
and

C.D. and E.F., Defendants. (b)

[Monday] the day of , 19 .

The defendants [*or. the defendant C.D.*] not having appeared herein [*or, not having delivered any statement of de-*

(a) Con. Rules 1897, Form 139.

(b) The full style of cause is necessary in all judgments.

fence], it is this day adjudged that the plaintiff recover against the said defendant \$ _____], and [costs to be taxed, or, where the officer signing judgment is also the taxing officer, \$ _____ for costs].

Judgment signed the _____ day of _____, 19 ____.

(Signature of Officer.)

The following may be appended at or after the signing of the judgment on production of the taxing officer's certificate:

The above costs have been taxed and allowed at \$ _____ as appears by a taxing officer's certificate dated the _____ day of _____, 19 ____.

(Signature of Officer.)

Con. Rules, 1888, Forms 160, 161.

Judgment in Default of Appearance in Action for Recovery of Land. (Rule 582.)

[Title, Date, &c., as in No. 139.]

the _____ day of _____, 19 ____ (d)

No appearance having been entered to the writ of summons herein, it is this day adjudged that the plaintiff recover possession of the land in the said writ mentioned, being (*describing the land*). [*Where plaintiff is so entitled under Rule 585, add, "and do also recover against the said C.D. (the defendant) his costs to be taxed or \$ _____ for costs."*]

(Conclude as in No. 802.)

Con. Rules, 1888, Form 162.

Judgment in Default of Defence in Action for Recovery of Land. (Rule 590.)

[Title, Date, &c., as in No. 802.]

No statement of defence having been delivered herein, it is this day adjudged that the plaintiff recover possession of the land in the statement of claim herein mentioned being

(c) Con. Rules 1897, Form 140.

(d) The day of the week is necessary: Rule 623.

(e) Con. Rules 1897, Form 141.

803

Recovery of land on default of appearance. (c)

804

The same, default of defence. (e)

, and do also recover against the said *C.D.* (*the defendant*) [his costs to be taxed, *or*, \$ for costs].

(*Conclude as in No. 802.*)

Con. Rules, 1888, Form 163.

Judgment in Default of Defence in Action for Recovery of Land with Damages. (Rule 591.)

[*Title, Date, &c., as in No. 802.*]

805

The same
with damages.
(a)

The defendant not having delivered any statement of defence, it is this day adjudged that the plaintiffs recover possession of the land in the statement of claim herein mentioned, and described as , in County of , and costs to be taxed and it is further adjudged that the plaintiffs recover against the defendant damages to be assessed.

(*Conclude as in No. 802.*)

Con. Rules, 1888, Form 165.

Judgment for Recovery of Land upon Confession of Action by Defendant. (Rule 597.)

[*Title, Date, &c., as in No. 802.*]

806

Recovery of
land—Judg-
ment on con-
fession of de-
fendant. (b)

The defendant, *C.D.*, having confessed this action [*or*, having confessed this action as to part of the said land, that is to say: *state the part*] it is this day adjudged that the said plaintiff do recover possession of the land in the writ [*or*, statement of claim] mentioned [*or*, of the said part of the said land] with the appurtenances and [costs to be taxed, *or*, \$ for costs.]

(*Conclude as in No. 802.*)

Con. Rules, 1888, Form 164.

(a) Con. Rules 1897, Form 142.

(b) Con. Rules 1897, Form 143.

Judgment of seisin for Dower in Default of Appearance.
(Rule 581).

[Title, Date, &c., as in No. 802.]

The defendant not having appeared to the writ of summons, it is this day adjudged that the plaintiff do have seisin of her third part or dower in the lands in question in this action, and that the same be forthwith delivered to her and set out by metes and bounds.

807

Dower, default of appearance. (c)

[If damages are claimed add, And it is further adjudged that the plaintiff do recover against the defendant damages to be assessed].

(Conclude as in No. 802, except memorandum as to costs).

Final Judgment in Default of Appearance or Defence, Recovery of Chattels. (Rules 577, 588.)

[Title Date, &c., as in No. 802.]

The defendants [or, the defendant C.D.] not having appeared herein [or, not having delivered any statement of defence] it is this day adjudged that the plaintiff recover against the said defendant [or, that the said defendant do forthwith deliver to the plaintiff] possession of the chattels in the writ [or, statement of claim] mentioned, and do also recover against the said defendant his costs to be taxed [or, \$ for costs].

808

Recovery of chattels, default of appearance or defence. (d)

(Conclude as in No. 802.)

For judgments on praecipe in action for foreclosure and sale in mortgage actions, see Nos. 864, 865.

(c) Con. Rules 1897, Form 144.

(d) Con. Rules 1897, Form 145.

809

Affidavit for costs in action for recovery of land in case of non-appearance. (a)

Formal parts: see No. 744.

1. (*Prove due service of writ.*)
2. At the time of the issue of the writ of summons in this action, to wit, on the day of , 19 , the defendant was in the actual adverse possession of the land sought to be recovered in this action, namely (*describe it shortly*).

3. (*Shew means of knowledge.*)

Interlocutory Judgment in Default of Appearance or Defence where Demand Unliquidated. (Rule 578.)

810

Interlocutory judgment on default. Demand unliquidated. (b)

[*Title, Date, &c., as in No. 802.*]

No appearance having been entered to the writ of summons [*or, no statement of defence having been delivered by the defendant*] herein;

It is this day adjudged that the plaintiff recover against the defendant the value of the goods, [*or, damages or both, as the case may be*], to be assessed.

Judgment signed the day of , 19 .
(*Signature of Officer.*)

Con. Rules, 1888, Form 166.

Final Judgment in Default of Appearance or Defence, after Assessment of Damages. (Rule 578.)

811

Final judgment on default after assessment of damages. (c)

[*Title, Date, &c., as in No. 802.*]

No appearance having been entered to the writ of summons [*or, no statement of defence having been delivered by the defendant*] herein, and the damages which the plaintiff was entitled to recover having been assessed at \$, as by dated the , 19 , appears, it is adjudged that the plaintiff recover \$ and [*costs to be taxed, or, \$ for costs*].

(*Conclude as in No. 802.*)

Con. Rules, 1888, Form 168.

(a) See Rule 585.

(b) Con. Rules 1897, Form 146.

(c) Con. Rules 1897, Form 147.

(*Formal parts, as in No. 403.*)

812

On the part of the defendant that the judgment entered in this action on the day of , 19 , [if Notice of motion to set aside regular judgment for default. necessary, and the writ of *fiery facias* issued under such judgment on the day of , 19], may be set aside and that the defendant may be at liberty to enter an appearance [*or, to deliver a defence*] in this action.

(*Formal parts, as in No. 744.*)

813

Affidavit in support.

1. The writ of summons herein was issued on the day of , 19 , and served on the day of , 19 , [*or, the plaintiff's statement of claim was delivered on the day of , 19], and judgment by default of was entered on the day of (State subsequent proceedings, if any, desired to be set aside).*]

2. (*State any circumstances in explanation why judgment was allowed to go by default, and the delay, if any, in making the application.*)

3. (*State the nature of the plaintiff's claim by reference to the writ or statement of claim, if any, and the facts relied upon as affording a good defence.*)

4. I am advised and verily believe that I have a good defence to this action upon the merits.

(*Formal parts, as in No. 403.*)

814

On the part of the defendant that the judgment entered in this action on the day of , 19 , [if Notice of motion to set aside judgment for irregularity. necessary, and the writ of *fiery facias* issued on such default on the day of , 19], may be set aside as irregular on the ground that (*specify the irregularity*) (*d*). and that the defendant may be at liberty to enter an appearance [*or, deliver a defence*] in this action, and that the plaintiff may be ordered to pay the defendant his costs of this application.

(*d*) See Rule 362.

815

Affidavit in support.

(*Formal parts: see No. 744.*)

1. On the _____ day of _____, 19____, the writ of summons in this action was issued out of this Honourable Court.

2. (*State the subsequent proceedings in the action and shew how they were irregular.*)

3. I am advised and verily believe that I have [*or, the said defendant has*] a good defence to this action on the merits.

Judgment in Pursuance of Order. (For use where leave has been given to sign judgment unless some condition should be complied with.) (Rule 638.)

816

Judgment pursuant to an order.

[*Title, Date, &c., as in No. 802.*]

Pursuant to the order of _____ dated _____ 19____, (a) whereby it was ordered _____ and default having been made _____

It is this day adjudged that the plaintiff recover against the said defendant \$ _____ and [costs to be taxed, *or, \$* _____ for costs.]

(*Conclude as in No. 802.*)

Con. Rules, 1888, Form 175.

Judgment in Pursuance of Order. (For use where leave has been given to sign Judgment unless money should be paid into Court.) (Rule 603.)

817

Judgment pursuant to order on default of payment into court (b)

[*Title, Date, &c., as in No. 802.*]

Pursuant to the order of _____ dated the _____ day of _____, 19____, whereby it was ordered that unless \$ _____ be paid into Court by the defendant within a week, the plaintiff be at liberty to sign final judgment for the amount indorsed on the writ of summons with interest, if any, and costs; and the said defendant not having paid into Court, the said sum of \$ _____, as conditioned by the said order it is this day adjudged that the plaintiff recover against the defendant \$ _____ and [costs to be taxed *or, \$* _____ for costs].

(*Conclude as in No. 802.*)

Con. Rules, 1888, Form 176.

(a) Con. Rules 1897, Form 148.

(b) Con. Rules 1897, Form 149.

Judgment for Plaintiff's Costs after Confession of Defence.
(Rule 295).

[Title, Date, &c., as in No. 802.]

The defendant in his statement of defence herein having alleged a ground of defence which arose after the commencement of this action, and the plaintiff having on the day of , 19 , delivered a confession of that defence. **818**
Judgment for costs after confession of defence. (c)

It is this day adjudged that the plaintiff recover against the defendant [costs to be taxed, or, \$ for costs.]

(Conclude as in No. 802.)

Con. Rules, 1888, Form 179.

Judgment for Costs after acceptance of Money paid into Court. (Rule 425.)

[Title, Date, &c., as in No. 802.]

The defendant having paid into Court in this action the sum of \$ in satisfaction of the plaintiff's claim, and the plaintiff having by his notice dated the day of , 19 , accepted that sum in satisfaction of his entire cause of action, and the plaintiff's costs herein having been taxed, and the defendant not having paid the same within 48 hours after the said taxation. **819**
Judgment for costs after acceptance of money paid into court. (d)

It is this day adjudged that the plaintiff recover against the defendant costs to be taxed.

(Conclude as in No. 802.)

Con. Rules, 1888, Form 180.

Judgment for Defendant's Costs on Discontinuance.
(Rule 430.)

[Title, Date, &c., as in No. 802.]

The plaintiff having by a notice in writing dated the day of , 19 , wholly discontinued this action [or, withdrawn his claim in this action for, or, withdrawn so much of his claim in this action as relates to—or as the case may be.] **820**
Judgment for defendant's costs on discontinuance. (e)

(c) Con. Rules 1897, Form 150.

(d) Con. Rules 1897, Form 151.

(e) Con. Rules 1897, Form 152.

It is this day adjudged that the defendant recover against the plaintiff [costs to be taxed, or, \$ for costs].

(Conclude as in No. 802.)

Con. Rules, 1888, Form 178.

SECTION III.—JUDGMENT ON MOTION FOR JUDGMENT.

Judgment on Motion for Judgment.

(Title, Date, &c., as in No. 822.)

821

Judgment on
motion for
judgment. (a)

1. Upon motion for judgment made this day unto this Court by counsel for the plaintiff (*or as may be*), in presence of counsel for the defendant (*or as may be*) [*or no one appearing for , although duly notified as by appears*] and upon hearing read and upon hearing counsel [aforesaid *or, for the defendant or as may be*].

2. [*Where necessary, This Court doth declare, &c.*]

3. [*And*] this Court doth order and adjudge, &c.

4. And this Court doth further order and adjudge, &c.

(Conclude as in No. 822.)

(Signature of officer settling judgment.) (b)

SECTION IV.—JUDGMENT AFTER TRIAL.

Judgment after Trial. No. 1.

822

Judgment
after trial
(general form.)
(c)

In the High Court of Justice.

Hon. Mr. Justice

the day of , 19 . (d)

(Date of pronouncing judgment.)

Between Plaintiff,
and
Defendant.

1. This action coming on for trial this day [*or, on*
the day of , 19 , before this Court at

(a) Con. Rules 1897, Form 164.

(b) This direction is not in Con. Rules 1897, Form 164.

(c) Con. Rules 1897, Form 160.

(d) The day of the week should be stated: Rule 623.

the sittings holden at _____ for trial of actions without a jury [or, at the Assizes holden for the County of _____ at _____,] in presence of counsel for all [or, both] parties [or if some of the parties do not appear for the plaintiff and the defendant *C.D.*, no one appearing for the defendants *E.F.* and *G.H.*, although they were duly served with notice of trial as by the affidavit of _____ appears, or as may be] upon hearing read the pleadings and hearing the evidence adduced and what was alleged by counsel aforesaid [if judgment was reserved add, this Court was pleased to direct this action to stand over for judgment, and the same coming on this day for judgment].

2. This Court doth order and adjudge (as may be directed). [Or if any declaration is necessary, This Court doth declare (e.g., that the deed mentioned in the 4th and 5th paragraphs of the plaintiff's statement of claim is fraudulent and void as against the plaintiff and all other creditors of the defendant, *X.Y.*, except the defendant *C.J.*, and doth order and adjudge the same accordingly.)]

3. And this Court doth further order and adjudge (add any special or appropriate direction or reference to Master or other officer).

4. If so And this Court doth reserve further directions and the question of costs until after the Master shall have made his report.

(Signature of officer settling judgment where not the same person as the officer signing judgments.)

Judgment signed the _____ day of _____, 19 _____.

M. B. J.,

Clerk of the C. and P.

(or other officer signing judgments.)

Con. Rules, 1888, Form 169.

Judgment after Trial. (No. 2.) By Court without a Jury.

[Title, Date, &c., as in No. 822.]

1. (Formal parts, as in Form 822.)

2. This Court doth order and adjudge that the plaintiff do recover from the defendant (as may be directed).

823
Judgment
after trial
without a
jury. (e)

(e) Con. Rules 1897, Form 161.

3. And this Court doth further order and adjudge that the defendant do pay to the plaintiff his costs of this action forthwith after taxation thereof. [*Or, this Court doth order and adjudge that this action be and the same is hereby dismissed with costs to be paid by the plaintiff to the defendant forthwith after taxation thereof.*]

(*Signature of officer signing the judgment.*) (a)

Judgment signed, &c., as in No. 822.

The following may be appended at or after the signing of the judgment on production of the taxing officer's certificate.

The above costs have been taxed and allowed at \$
as appears by a taxing officer's certificate dated the day
of , 19 .

(*Signature of officer signing the judgment.*)

Con. Rules, 1888, Form 170.

Judgment after trial. (No. 3.) With a Jury.

[*Title, Date, &c., as in No. 822.*]

824

Judgment
after trial
with a jury. (b)

1. This action having come on this day for trial before this Court with a jury of the County of , at the sittings holden at for the trial of actions [*or, at the Assizes holden at for the County of*] in presence of all parties [*or if some of the parties do not appear for the plaintiff and the defendant C.D., no one appearing for the defendants E.F. and G.H., although they were duly served with notice of trial as by the affidavit of appears*] and the jury having found [*a verdict for the plaintiff for \$ damages, or as the case may be.*]

2. This Court doth order and adjudge that the plaintiff do recover (*as in Form 822*).

(*Signature of the officer who settles the judgment.*) (c)

(*Conclude as in No. 822.*)

Con. Rules, 1888, Form 171.

(a) This direction is not, but should have been, in Form No. 161 in the App. to Con. Rules 1897.

(b) Con. Rules 1897, Form 162.

(c) This direction is not in Con. Rules 1897, Form 162.

*Form of Judgment when action tried or Damages assessed in
the County Court.*

In the High Court of Justice.

(Name of Judge.)

J.C.C., of York.

(Title, Date, &c., as in No. 822.)

825

Judgment
after trial had
at a County
Court sittings.
(d)

1. This action having come on for [trial *or*, the assessment of damages] at the sittings of the County Court of the County of York, holden on the day of , in presence of counsel for the plaintiff and defendant [*or if so*, no one appearing for defendant although duly notified] and upon hearing read the pleadings, and upon hearing the evidence adduced, and what was alleged by counsel aforesaid and the [said Court *or*, a jury of the said County (*as the case may be*)] having assessed the damages of the plaintiff at the sum of \$

2. This Court doth order and adjudge that the plaintiff do recover against the defendant sum of \$, and his costs to be taxed.

(Conclude as in No. 822.)

(Formal parts: see No. 822.)

826

1. This action coming on for trial this day before this Court against the defendant *C.D.* in the presence of counsel for the plaintiff and the said defendant *C.D.*, and upon motion for judgment against the defendant *E.F.*, for default in delivering a defence [in presence of counsel for the said defendant *E.F.*, *or*, no one appearing for the defendant *E.F.*, [*if so*, although duly notified as by [affidavit *or*, admission of service appears], [*or*, no one appearing for the said defendant *E.F.*, who has not appeared in this action and as to whom the pleadings have been noted closed as by the certificate of (*proper officer*), appears] and upon hearing read the pleadings and the evidence adduced and upon hearing counsel aforesaid.

Judgment
where motion
for judgment
is made as
against a de-
fendant at the
trial of the
action.

2. This Court doth order and adjudge, &c.

(*Formal parts: see No. 822.*)

827

Judgment of
non-suit after
verdict of a
jury.

1. This action having come on for trial on the 9th and 10th days of April, 1900, before this Court with a jury of the County of York, at the sittings holden at the City of Toronto for the trial of actions in presence of counsel for both parties, and counsel for the defendants having at the close of the plaintiff's case and again at the close of the whole evidence moved for a nonsuit or judgment dismissing this action; [this Court was pleased to direct that the said motions should stand over for judgment, and this action coming on this day for judgment upon the defendants' said motions].

2. This Court doth order and adjudge that this action be and the same is hereby dismissed with costs to be paid by the plaintiff to the defendants forthwith after taxation thereof.

828

Judgment dismissing action,
and for defendant on
counterclaim.

(*Formal parts: see No. 822.*)

2. This Court doth order and adjudge that the action of the plaintiff as against the defendant be and the same is hereby dismissed without costs.

3. And this Court doth further order and adjudge that the defendant do recover against the plaintiff *L.* on his counterclaim the sum of eighty-three dollars and twenty-five cents (\$83.25) without costs [*or, with costs to be taxed*].

829

Judgment
dismissing
action and
directing a
reference as
to a counter-
claim.

(*Formal parts: see No. 822.*)

2. This Court doth order and adjudge that this action be and the same is hereby dismissed without costs.

3. And this Court doth further order and adjudge that it be referred to the Master of this Court [at Barrie] to take an account of the amount due the defendants for principal and interest on the mortgages in their counterclaim referred to.

4. And this Court doth further order and adjudge that the plaintiff do pay to the defendants the amount which shall be so found due to them forthwith after the said Master shall have made his report.

5. And this Court doth not see fit to make any order as to the costs of the said counterclaim.

(*Formal parts: see No. 822.*)

2. And this Court doth further order that the dismissal of this action is to be without prejudice to any action which the said plaintiff may bring [in respect to the ownership of the lands or any part thereof mentioned in the said pleadings] if so advised.

830

Judgment dismissing action without prejudice to another action.

(*Formal parts: see No. 822.*)

2. This Court doth order and adjudge that the plaintiffs do recover against the said defendants *M.McK.* and *J.J.McK* the sum of \$ on the causes of action set out in the paragraphs of their statement of claim together with costs to be taxed [*if so* on the County Court scale, *if so* without any right to the said defendants *M.McK.* and *J.J.McK.* to set off any costs against the same.]

831

Judgment on claim and counterclaim.

2. And this Court doth further order and adjudge that the plaintiffs' action be dismissed as to the causes of action mentioned and set out in the paragraphs of their statement of claim without costs.

3. And this Court doth further order and adjudge that the defendant *J.J.McK.* do recover against the plaintiffs on his counterclaim in this action the sum of \$5.19 without costs to be set off against the judgment in favour of the said plaintiffs.

4. And this Court doth further order and adjudge that the counterclaim of the defendant *M.McK.* be dismissed without costs.

(*Formal parts: see No. 822.*)

1. This action coming on before this Court at on the and days of , 19 , for the trial of the questions between the defendants and the third parties , in presence of counsel for the defendants and for the third parties, upon hearing read the evidence taken at the trial of this action, and upon hearing what was alleged by counsel aforesaid. This Court was pleased to direct that this action as to the questions between the defendants and the third parties should stand over for judgment, and the same coming on this day for judgment.

832

Judgment for third party against defendant.

2. This Court doth order and adjudge that the claim of the defendants against the third parties and for indemnity be and the same is hereby dismissed with costs, to be paid by the defendants to the said third parties forthwith after taxation thereof.

833

Judgment for damages to be assessed by Master.

(*Formal parts: see No. 822.*)

1. This action having come on for the assessment of damages before this Court at the sittings holden at the City of for the trial of actions in the presence of counsel for the plaintiff, [no one appearing for the defendant,] upon hearing read the writ of summons, the plaintiff's statement of claim, and the affidavits of service thereof, and the judgment of this Court dated the day of 19 ; and upon hearing what was alleged by counsel aforesaid.

2. This Court doth order and adjudge that it be referred to the Master in Ordinary of this Court (*or as may be*) to inquire and state what damages the plaintiff has sustained by reason of the matters in the plaintiff's statement of claim mentioned.

3. And this Court doth further order and adjudge that the said defendant do pay to the said plaintiff such sum as the said Master may find the plaintiff entitled to as damages aforesaid forthwith after the confirmation of the said Master's report.

4. And this Court doth further order and adjudge that the said defendant do pay to the said plaintiff his costs of this action (including the costs of the said reference) forthwith after taxation thereof.

Judgment on Motion after Trial of Issue.

(*Title, Date, &c., as in No. 822*) (b).

834

Judgment on motion after trial of issue.
(a)

1. Upon motion made unto this Court for judgment on behalf of the , in presence of , &c., as in No. 822, reciting as follows:

And the issues [*or, questions*] of fact arising in this action by the order dated the day of ordered to be tried

(a) Jud. Act, Form 165.

(b) It would seem proper to entitle the judgment in the action in which the issue was directed and not merely in the title of the issue.

before having on the day of been tried
before , and the having found

2. This Court doth order and adjudge that the do
recover against the the sum of \$ and costs to be
taxed.

(Signature of officer settling judgment.) (c)

(Conclude as in No. 802.)

Con. Rules, 1888, Form 181.

In the High Court of Justice.

835
Judgment on
issue.

(Name of Judge.) the day of , A.D. 19 .

(Title of original action or matter.)

and

(Title of Issue.)

1. The issue directed to be tried by the order made in the first above-mentioned action on the day of between the above-named *T.*, plaintiff, and *S.*, defendant, coming on for trial this day before this Court at the sittings for the trial of actions without a jury at the City of Toronto, in the presence of counsel for the said *T.* and *S.*, upon hearing read the pleadings and upon hearing the evidence adduced and what was alleged by counsel aforesaid.

[If so this Court was pleased to direct the said issue to stand over for judgment and the same coming on this day for judgment.]

2. This Court doth declare that the moneys paid into Court to the credit of the first-mentioned cause are the property of the plaintiff *T.*, and doth adjudge the same accordingly.

3. And this Court doth order and adjudge that said defendant do pay to said plaintiff his costs of the said action and issue to be taxed.

4. And this Court doth further order that the moneys in Court to the credit of said first-mentioned action as aforesaid be paid out to the said plaintiff together with interest accrued thereon.

ACCOUNT.

836

Judgment for
reference to
take account
subject to pro-
visions of the
Surrogate Act
R.S.O. 1897, c.
59.

(*Formal parts: see No. 908.*)

2. This Court doth order that it be referred to the Master of this Court to take (1) an account of the real and personal estate of *A.B.* deceased, the testator in the pleadings mentioned come to the hands of *C.D.* deceased in the said pleadings mentioned, and of the defendant as executor of his estate, and of the dealings of the said *C.D.* deceased, and of the said defendant with the said real and personal estate, having regard to the provisions of The Surrogate Court Act as to such portion of the said accounts as have been passed in the Surrogate Court.

3. And this Court doth reserve further directions and the question of costs until after the said Master shall have made his report.

837

Judgment for
accounts
against execu-
tors and
trustees.

(*Formal parts: see No. 908.*)

2. This Court doth order and adjudge that the following accounts and inquiries be taken and made by the Master of this Court at , that is to say:

(1) An account of the assets, property and effects real and personal of the estate of *A.B.*, the testator in the pleadings mentioned come to the hands of the defendants, and the late *C.D.* as executors and trustees of the said estate.

(2) An account of the dealings of *C.D.* and of the defendants and and each of them with the estate of the said *A.B.*, deceased, in the pleadings named.

(3) And an account of the property, moneys and securities of the said estate in the hands of the said defendants and or any or either of them, or now outstanding and unrealized.

(4) An account of the property, money and securities of the said estate as the same existed at the time of the death of the said testator *A.B.*, and as the same now exist, and of the losses, if any, in connection therewith and how and when such losses, if any, were occasioned and arose;

(5) And in case the said Master shall find that any part of the said estate real or personal shall have been lost, an inquiry whether the defendants or any or either of them are liable to account for and make good such losses or any part thereof.

3. And this Court doth reserve further directions and the question of costs until after the said Master shall have made his report.

ADMINISTRATION.

General Form of Judgment for Administration. (Rules 946, 947, 953.)

[*Title, Date, &c., as in No. 802 or 822.*]

1. Upon the application of the above-named plaintiff in the presence of the solicitor for the defendant **838**
Judgment for [or, no administration (general form). (a)] one appearing for the defendant although duly notified as by affidavit filed appears], and upon hearing read the affidavits and papers filed, and what was alleged by the solicitor for the applicant or solicitors for all parties].

2. It is ordered and adjudged that all necessary inquiries be made, accounts taken, costs taxed, and proceedings had for the administration and final winding up of the personal [and real] estate of and for the adjustment of the rights of all parties interested therein, by the Master of the Supreme Court of Judicature at .

3. And it is further ordered and adjudged that all balances which may be found due from the plaintiff or defendant or any or either of them to the said estate be, forthwith after the same shall have been ascertained as aforesaid, paid into Court to the credit of this cause, subject to the further order of the Court.

4. And it is further ordered and adjudged that such personal [and real] estate, or such parts thereof as the said Master may hereafter direct, be sold, as the said Master may direct, and that the purchasers do pay their purchase money into Court to the credit of this cause, subject to the order of the Court.

5. And it is further ordered and adjudged that the Master do execute conveyances for any infant parties who by reason of their tender years are unable to execute the same.

(*Conclude as in No. 802, except memorandum as to Costs.*)

Con. Rules, 1888, Form 185.

(a) Con. Rules 1897, Form 156.

Form of Judgment for Administration Accounts. (Rules 620, 946, 953.)

[Title, Date, &c., as in No. 822.]

839

Judgment for
the usual
administra-
tion accounts.
(a)

1. This Court doth order and adjudge that the following accounts and inquiries be taken and made by the Master of the Supreme Court of Judicature at , that is to say:

(1) An account of the personal estate of A.B., deceased, the testator in the pleadings mentioned, come to the hands of, &c.

(2) An account of the said testator's debts.

(3) An account of the said testator's funeral expenses.

(4) An account of the said testator's legacies.

(5) An inquiry as to what parts, if any, of the said testator's personal estate are outstanding or undisposed of.

(Where necessary.)

2. And this Court doth further order and adjudge that the following further accounts and inquiries be taken and made, that is to say:

(6) An inquiry as to what real estate the said testator was seised of, or entitled to, at the time of his death.

(7) An inquiry as to what incumbrances affect the said testator's real estate.

(8) An account of the rents and profits of the said testator's real estate received by, &c.

(Where a Sale is necessary.)

(9) An account of what is due to such of the incumbrancers as shall consent to the sale hereinafter directed in respect of their incumbrances.

(10) An inquiry as to what are the priorities of such last-mentioned incumbrances.

3. And this Court doth further order and adjudge that the testator's real estate be sold, with the approbation of the Master of the Supreme Court of Judicature at .

4. And this Court doth reserve further directions and the question of costs, until after the said Master shall have made his report.

Con. Rules, 1888, Form 187.

8. [And this Court doth further order and adjudge that the said Master do tax to the plaintiffs their costs of this action, as between solicitor and client, and do tax to the Official Guardian *ad litem* his costs of this action.]

9. And this Court doth further order and adjudge that the Master do take a subsequent account of the interest due to the creditors in the report named and add the amount thereof to their claims.

Special directions as to distribution.

10. And this Court doth further order and adjudge that the money to be paid into Court by the plaintiffs be applied first, in payment of the costs of this action; secondly, in payment of the creditors of the said testator, and that the balance, if any, together with the purchase money of the said land, when paid in, be applied, first, in payment of those incumbrancers whose claims are a charge upon the said real estate, and were charged thereon previous to the marriage of the said *M.K.*—secondly, in payment to the said *M.K.* of the sum allowed to her in lieu of dower if she elect to take dower and a gross sum is allowed to her, or if a sum is to be set apart for her, then and in such case that such sum be so set apart,—and thirdly, in payment of the other creditors of the said testator [in so far as the personalty was insufficient to pay them]. And if the said *M.K.* shall elect to take under the said will then, after payment of the costs, claims and debts aforesaid, that out of the proceeds of the sale of the real estate a sufficient sum be set apart to satisfy the said allowance (subject to reduction as aforesaid) under the said will, to the said *M.K.*, and that the interest accruing thereon be from time to time paid out to her during her life, but subject to the reduction in the event of her marrying again,—and fourthly, that subject to the payment hereinafter directed to be made to the said *M.K.* (including the moneys, if any, set apart for the said *M.K.*), the balance with the interest accrued thereon be paid out to the defendant on his attaining majority.

ALIMONY.

(*Formal parts: see No. 822.*)

841

Judgment for alimony.

2. This Court doth declare that the plaintiff is entitled to a proper allowance per week by way of alimony, so long as she shall continue to live separate and apart from the defendant, having regard to the means, station and position in life of

the parties hereto, and doth order and adjudge the same accordingly.

3. And this Court doth further order and adjudge that it be referred to the Master of this Court at to ascertain and fix a proper allowance to be paid by the defendant to the plaintiff for alimony so long as the plaintiff shall continue to live separate and apart from the defendant having regard to the means, station and position in life of the parties [and also to ascertain and fix a proper sum to be paid by the defendant to the plaintiff as an allowance for interim alimony from the date of the service of the writ of summons in this action to the date of this judgment pursuant to the said order of the day of last], and to tax to the plaintiff her costs of this action as between solicitor and client, and to appoint a time and place for payment.

4. And this Court doth further order and adjudge that the defendant do pay to the plaintiff what the said Master may find proper to be allowed her for alimony [and interim alimony as aforesaid] up to the time of making the said report, and her costs of this action forthwith after the said Master shall have made his report.

5. And this Court doth further order and adjudge that the defendant do from time to time pay to the plaintiff at such time and place as the said Master shall appoint during the lifetime of the parties, and so long as the plaintiff shall live separate and apart from the defendant, or until this Court shall make other order to the contrary, such sum as the said Master may find proper to be allowed to her for alimony.

5. But in the event of any of the days appointed for the payment falling upon a Sunday or other holiday, this Court doth further order and adjudge that payment be made on the next juridical day thereafter.

(Title, &c., as in No. 908.)

Upon the petition of the above-named plaintiff presented unto this Court this day by Mr. her counsel, no one appearing for the defendant although duly notified as by [order of the Master in Chambers dated the day of instant, and affidavit of service thereof appears;] upon hearing read the said petition and the affidavits of the plaintiff filed in support thereof, and upon hearing what was alleged by counsel for the said plaintiff:

842

Order for sale
of land to
realise ali-
mony.

2. This Court doth declare that the plaintiff is entitled to have the lands and premises mentioned in the said petition or a competent part thereof sold for the satisfaction of the arrears of alimony and costs due to her from the said defendant.

3. And this Court doth order that such lands and premises be forthwith sold with the approbation of the Master of this Court at [Sarnia], free from the dower of the plaintiff, if any, in the said lands, if she shall consent, but subject thereto if she shall not consent, and the purchasers are to pay their purchase money into Court to the credit of this cause, and all proper parties are to join in the conveyance to the purchasers, as the said Master shall direct.

4. And this Court doth further order that if the said Master shall find that the plaintiff was entitled to dower in the said lands so sold, and the said lands shall be sold free from the said dower of the plaintiff therein, one-third of the said purchase money to be set apart and invested as a security for the plaintiff's dower, so long as the same shall not be required for the payment of the plaintiff's alimony and costs as hereinafter mentioned.

5. And this Court doth further order that the said purchase money, or the remaining two-thirds thereof in case the said one-third be set apart as aforesaid, be applied in payment of the arrears due to the plaintiff for alimony and costs, including the costs of this application and subsequent costs as between solicitor and client to be taxed, and the residue thereof is to remain in Court, and the income arising therefrom, and also from the said one-third directed to be set apart as security for dower, in case the same shall be so set apart, together with such part of the capital of the said purchase money as may be requisite, is to be from time to time applied in payment of the future accruing instalments of alimony payable by the defendant to the plaintiff under the said judgment, so often as default shall be made in payment of the same by the said defendant, but the capital of the one-third part of said purchase money which may be set apart as aforesaid, as security for dower, is not to be resorted to for the payment of the plaintiff's alimony and costs until the capital of the residue of the purchase money shall have been exhausted.

6. And this Court doth further order that the residue of the purchase money and interest thereon, not required to meet the payments aforesaid shall, upon the death of the said plaintiff, be paid to the defendant, unless this Court shall hereafter see fit to make other order.

(*Formal parts: see No. 908.*)

upon opening of the matter and upon hearing read the said petition and the judgment therein dated the &c., and upon hearing what was alleged by counsel aforesaid, and it appearing that the plaintiff hath been guilty of a breach of the said judgment [in that she hath abducted the children of the said defendant out of the jurisdiction of this Court.]

843

Order on petition suspending payment of alimony. (a)

2. This Court doth order that the defendant be and he is hereby relieved and discharged from the payment of the alimony ordered to be paid by the said defendant to the said plaintiff by the said judgment until this Court shall make further order to the contrary.

BOND.

(*Formal parts: as in No. 908.*)

This Court doth order and adjudge that the plaintiff do recover against the defendant the sum of \$ (amount of penalty) and costs to be taxed. But it appearing by the statement of claim that the bond sued upon by the plaintiff is subject to the following condition (*set out the condition*), and the plaintiff having alleged certain breaches thereof, to wit (*set out alleged breaches*) and because it is unknown to the Court what damages the plaintiff hath sustained by reason of the said breaches, and for which the plaintiff is now entitled to execution; therefore this Court doth order and adjudge that (*here state the manner in which the damages are to be assessed*).

844

Judgment on motion for defence on a bond for performance of a condition. (b)

(a) See *Keith v. Keith*, In Chy. 1 May, 1878.

(b) Under R. S. O. 1897, c. 324, s. 4. According to the English practice a plaintiff may sign judgment for the penalty of a bond on a writ specially indorsed, and need not deliver a statement of claim; but in lieu thereof, may deliver a suggestion of breaches of the condition of the bond to the defendant, and proceed thereon to assess damages therefor: See Eng. R. (1883) 114. In Ontario, however, it seems necessary in such cases to deliver a statement of claim suggesting the alleged breaches, and in default of defence move for judgment under Rule 593 for the amount of the penalty and for assessment of the damages sustained by the breaches alleged: see *Star Life Assurance Society v. Southgate*, 18 Pr. 151.

(*Formal parts as in No. 822.*)

845

Final judgment on bond for performance of a condition after assessment of damages for breach assigned.

This Court doth assess the damages of the plaintiff sustained by reason of the breach of the conditions alleged in the plaintiff's statement of claim, of the sum of \$.

2. And this Court doth order and adjudge that the plaintiff do have execution of the judgment signed in this action for the sum of \$ (*amount of damages assessed*) and his costs to be taxed pursuant to the statute in that behalf.

846

Judgment at trial on bond. Damages assessed under R.S.O. c. 324, s. 4. (a)

(*Formal parts: see No. 822.*)

2. This Court doth order and adjudge that the plaintiffs do recover against the defendant the sum of \$500, being the penalty named in the bond referred to in the statement of claim.

3. And this Court doth further order that (subject to any further order which the Court may hereafter see fit to make in the premises), the plaintiffs be at liberty to issue execution against the goods and lands of the said defendant for the sum of \$284.93, only, being the damages which the plaintiffs have sustained up to the day of , by reason of the breach of the condition of the said bond.

4. And this Court doth further order and adjudge that the said defendant do pay to the plaintiffs their costs of this action forthwith after taxation thereof.

847

Another form.

(*Formal parts: see No. 822.*)

1. This Court doth order and adjudge that the plaintiff do recover against the defendant the sum of \$ (*full amount of penalty*) and costs to be taxed. But it appearing that the bond in the statement of claim mentioned was subject to the following condition (*set out condition*) and the plaintiff having in his statement of claim alleged a breach of the condition to wit (*set out alleged breach*). This Court finds that the said defendant hath committed the said breach and that the plaintiff hath sustained damages by reason thereof to the amount of \$.

2. This Court doth therefore order and adjudge that the plaintiff do now have execution of this judgment for the said sum of \$ (*damages assessed*) and for his said costs.

(a) See *Goold v. Brown*, 15th October, 1900.

CHATTEL MORTGAGE—JUDGMENT SETTING ASIDE.

(*Formal parts: see No. 822.*)

848

2. This Court doth declare that the chattel mortgage in the plaintiff's statement of claim mentioned given by the plaintiff to the defendant dated the day of and filed in the office of the Clerk of the County Court of the County of on the day of as number is void and of no effect, and should be set aside and cancelled; and doth order and adjudge the same accordingly.

Judgment
setting aside
chattel mort-
gage and for
damages for
trespass.

3. And this Court doth further order and adjudge that the defendant, his servants, workmen, and agents be, and they are hereby perpetually restrained from enforcing the said chattel mortgage, and removing the goods and chattels in the said chattel mortgage mentioned or referred to, from the said plaintiff's house and possession, and from selling the same or any of them, and from assigning or otherwise disposing of the said chattel mortgage, and from interfering in any way with the said goods and chattels or any of them.

4. And this Court doth further order and adjudge that the plaintiff do recover from the defendant the sum of five dollars for his damages which he hath sustained by reason of the trespass in the statement of claim mentioned.

5. And this Court doth order and adjudge that the defendant do pay to the plaintiff his costs of this action [*if so, including the costs of the motion for injunction*], forthwith after taxation thereof.

(*Formal parts: see No. 822.*)

849

2. This Court doth declare that the chattel mortgage from to in the pleadings mentioned of the goods and chattels in question in this action is fraudulent and void as against the plaintiff and the other creditors of the said , and the defendant , and each of them, and doth order and adjudge the same accordingly.

Judgment
setting aside
fraudulent
chattel mort-
gage.

3. And this Court doth further order and adjudge that the defendant, his servants, workmen and agents be and they are hereby perpetually restrained from selling or disposing of the said goods and chattels contained in the said chattel mortgage, or in any way interfering therewith, and from assigning or transferring the said chattel mortgage.

4. And this Court doth further order and adjudge that it be referred to the Master of the Supreme Court of Judicature at _____, to inquire and state whether any persons other than the plaintiff have any lien or charge upon the said goods and chattels contained in the said chattel mortgage, and to cause such persons (if any) to be served with process under the Consolidated Rules of this Court in that behalf; and the said Master is to take an account of what is due to the plaintiff and such creditors of the said _____ who may come in and contribute to the expenses of this action for principal money and interest, and tax to them their costs of this action and settle their priorities (a).

5. And this Court doth further order and adjudge that the said goods and chattels be forthwith sold, with the approbation of the said Master, and that the purchaser or purchasers do pay his, her or their purchase money into Court to the credit of this action, subject to the order of this Court, and the same when so paid in is to be applied:—First, In payment to the plaintiff of his costs of this action as between party and party, or so much thereof as may not be personally paid by the defendants as hereinafter directed. Second, In payment of what shall be found due to the plaintiff and the said creditors according to their priorities, together with subsequent interest and subsequent costs to be computed and taxed by the said Master.

6. And this Court doth further order and adjudge that the said Master do also take an account of the costs of the plaintiff as between solicitor and client, and the costs, charges, expenses and disbursements of the plaintiff of and incidental to this action over and above the plaintiff's costs as between party and party, and apportion the difference among the creditors entitled to share in the said moneys including the plaintiff in proportion to the amounts realized for them under this judgment and the amount of such difference is to be paid out of the shares of the said creditors, including the plaintiff, in the said moneys according to such apportionment.

7. And this Court doth further order and adjudge that the defendants do pay to the plaintiff his costs of this action up to and inclusive of this judgment forthwith after taxation thereof by the said Master.

(a) On the matter being submitted to the Chancellor in *Loughead v. Vanstaden*, he directed that the judgment need not contain any clause giving the fraudulent grantees an opportunity to redeem.

EASEMENT.

(*Formal parts: see No. 822.*)

2. This Court doth declare that the defendant, his heirs and assigns, occupiers of the [quarter of Lot No. in the con. of the Township of , in the County of , is and are entitled to the free and uninterrupted use and enjoyment of a sleigh-road one perch wide] along the [east side of the north-east quarter of said lot No. in the con. of the Township of , in the County of , and Province of Ontario], and that the defendant is bound to erect and maintain a lawful fence on the [west] side of said road, and doth order and adjudge the same accordingly.

850
Judgment for
easement.
Right of way.

3. And this Court doth further order and adjudge that the defendant, his servants, workmen and agents, be and they are hereby perpetually restrained from entering upon or traversing the said (except the said sleigh-road as aforesaid).

4. And this Court doth further order and adjudge that the defendant do, within one month from the issue hereof, erect along the [west] side of said sleigh-road a lawful fence and do from time to time maintain the same in necessary and proper repair.

5. And this Court doth further order and adjudge that the defendant do pay to the plaintiff his costs of this action [if so, including his costs of the motion for an injunction herein], forthwith after taxation thereof.

DOWER.

(*Formal part: see No. 822.*)

1. This Court doth declare that the plaintiff is entitled to have assigned to her her dower in the lands and premises in the plaintiff's statement of claim described, and that she is entitled to her annuity under the will of *B.D.* in the said statement of claim mentioned, and also all arrears of her said dower and annuity which may be due from the defendant to the plaintiff and unpaid, and doth order and adjudge the same accordingly.

851
Judgment for
Dower and an
annuity and
for sale.

2. And this Court doth further order and adjudge that it be referred to the Master of the Supreme Court of Judicature at _____, to set out and assign to the plaintiff by metes and bounds her dower in the said lands and premises, and also to take an account of the amount (if any) due from the defendant to the plaintiff for arrears of dower and also for arrears of the said annuity, and also to appoint a time for payment of the growing payments of the said annuity as the same shall accrue.

3. And this Court doth further order and adjudge that after the lands and tenements shall be set out and assigned to the plaintiff for her said dower, the defendant do forthwith thereafter deliver to the plaintiff possession of the lands and premises which shall be so set out and assigned to her, and the tenants thereof (if any) are to attorn and pay their rents to the plaintiff.

4. And this Court doth further order and adjudge that the defendant do forthwith after the making of the Master's report pay to the plaintiff the amount of such arrears (if any) which the said Master shall find to be due to the plaintiff as aforesaid, and do also from time to time thereafter pay to the plaintiff the growing payments of said annuity as the same shall fall due at such time and place as the said Master shall appoint.

5. And this Court doth further order and adjudge that the defendant do pay to the plaintiff her costs of this action forthwith after taxation thereof.

6. And this Court doth further order and adjudge that in default of payment by the defendant of such arrears of dower and annuity and costs of this action within one month after the said Master shall have made his report, or in case the defendant shall make default in payment of the growing payments of the said annuity as the same shall fall due at such time and place as the said Master shall appoint, in that event the said Master do inquire whether any person or persons other than the plaintiff has or have any lien, charge or incumbrance, upon the said lands or any part thereof subsequent to the plaintiff, and if he shall find that there is or are any such person or persons he is to add him, her or them as parties to this action and cause them to be served with process, and is to take an account of what is due to such incumbrancer or incumbrancers and tax to them their costs of proving their claims and settle their priorities.

7. And this Court doth further order and adjudge that in default of payment of what shall be found due to the plaintiff

for the arrears of her said dower and annuity within one month after the said Master shall have made his report, or in the event of the said defendant making default at any time in payment of the growing payments of the said annuity at such time and place as the said Master shall appoint, the said lands be sold with the approbation of the said Master subject to the dower of the said plaintiff, and that the purchasers do pay their purchase money into Court to the credit of this action subject to the order of this Court, and that all proper parties do join in the conveyances as the said Master shall direct.

8. And this Court doth further order and adjudge that the purchase money be applied:—First, in payment of what shall be found due to the said plaintiff for arrears of her said dower and annuity and costs, and her subsequent costs to be taxed; and, Secondly, a sufficient part of the residue to be settled by the said Master, is to be set apart to secure the growing payments of the said annuity of the plaintiff, and the amount is to remain in Court and the income thereof applied from time to time in payment of the said annuity as the same shall fall due; and, Thirdly, in payment of the amounts which may be found due to the incumbrancers (if any) for principal, interest and costs, according to their priorities, and the residue thereof (if any) is to be paid to the said defendant. And upon the death of the said plaintiff the sum so ordered to be set apart to secure the growing payments of the said annuity together with such part, if any, of the income not required for the payment of the said annuity after payment of the claims of the incumbrancers (if any) is also to be paid to the said defendant.

(*Formal parts: see No. 877.*)

2. This Court doth declare that the plaintiff is entitled to Judgment for dower in the lands and premises in the said statement of claim mentioned. **852**
for
dower and
arrears.

3. And this Court doth order and adjudge that it be referred to the Master of this Court at _____ to set out and assign such dower to the plaintiff [(a) and to take an account of the rents, issues and profits of the said lands since the date of the death of the plaintiff's husband, to which the plaintiff is entitled as dowress, received by the order or for the use of the defendant, and to fix an occupation rent for the said

(a) Plaintiff is not entitled to this unless her husband died seised: see *Morgan v. Morgan*, 21st Dec. 1887.

lands while the defendant has been in occupation of the same and to allow to the plaintiff her proportion thereof in respect of her dower].

4. And this Court doth further order and adjudge that the defendant do pay to the plaintiff within one month after the said Master shall have made his report, the amount which the said Master shall find to be due to the plaintiff for arrears of dower, and in default thereof that after such dower shall have been set apart as aforesaid, the remaining part of said lands or a competent part thereof, be sold with the approbation of the said Master, and that the purchaser do pay his purchase money into Court to the credit of this action, and that all proper parties do join in the conveyance as the said Master shall direct.

5. And this Court doth further order and adjudge that the said purchase money when so paid into Court as aforesaid be applied first in payment of the amount which shall have been found due to the plaintiff for arrears of dower as aforesaid and her costs, unless the said costs shall have been sooner paid by the defendant, and the residue thereof (if any) be paid to the defendant.

6. And this Court doth further order and adjudge that the defendant do pay to the plaintiff her costs of this action forthwith after taxation thereof.

EQUITABLE EXECUTION.

(*Formal parts: see Nos. 822, 902 or 908.*)

853
Judgment or
order forequit-
able execution.
(a)

2. This Court doth declare that the equity of redemption of the defendant *C.D.* in the lands in question herein is exigible in execution to satisfy the claim of the plaintiff for damages and costs upon a judgment obtained by him in this action on _____, against the defendant *C.D.*, and to satisfy all the costs of this action, and doth order the same accordingly.

[*If so ordered,* 3. And this Court having caused an account to be taken of the amount due to the plaintiff under his said judgment up to the day of _____ being the time appointed for payment, as hereinafter mentioned, doth find that there is due for principal money the sum of \$ _____, and for interest the sum of \$ _____, and for costs, including the costs of this application, the sum of \$ _____, which said

(a) This will ordinarily be an order made under the provisions of Rules 1016 *et seq.*

principal, interest and costs together amount to the sum of \$

4. And upon the said defendant paying the said sum of \$ into the Canadian Bank of Commerce at its principal office in the city of Toronto between the hours of ten o'clock in the forenoon and one o'clock in the afternoon of the day of to the joint credit of the plaintiff and the Accountant of the Supreme Court of Judicature, this Court doth order that the plaintiff do release and discharge his said judgment.

5. But in default of payment by the time aforesaid this Court doth order and adjudge that the equity of redemption of the said defendant *C.D.* in the said lands be sold, with the approbation of the Master of this Court at , and that the purchasers do pay their purchase money into Court to the credit of this action, subject to the order of this Court, and that all proper parties do join in the conveyances.

6. And this Court doth further order and adjudge that the said purchase money be applied in payment of the amount found due to the plaintiff, together with subsequent interest and subsequent costs to be computed and taxed by the said Master, and the balance, if any, is to be paid to the defendant *C.D.*]

EXECUTORS AND ADMINISTRATORS. (b)

(*Formal parts: see No. 802.*)

It is this day adjudged that the plaintiff do recover against the defendant as [executor or administrator] of the estate

854

(b) A personal representative sued for a debt or liability of the deceased, is personally liable for costs in the event of the plaintiff's proceeding in the action, but the costs are ordered in the first place to be levied out of the assets of the deceased, and only in case of their not being so leviable are they leviable out of the personal representative's own property: *Wm. Exors.*, 9th ed., pp. 1859, 1862. *Lince v. Faircloth*, 14 P. R. 253.

Judgment against personal representative by default or where assets are admitted or proved. (b)

If the personal representative has fully administered the assets under his hands he should so plead. Where that defence is proved or admitted, the defendant is not personally liable for costs, and the only judgment the plaintiff is entitled to is one to be levied on assets *quando acciderint*. He is entitled to that even though he disputes the plea and fail: *McKibbin v. Feegan*, 21 Ont. App. 87.

Where a judgment is awarded against a personal representative to be levied out of the assets in his hands, if the amount cannot be levied proceedings may be taken to make him personally liable for the amount of the judgment. A judgment in that form is conclusive of there being assets: see *Wm. Exors.*, 9th ed., 1866, and see Forms Nos. 855 *et seq.*

and effects of _____, deceased, the sum of \$ _____ and costs to be levied out of the property which was of the said _____ at the time of his death in the hands of the said defendant as his executor [or, administrator] as aforesaid, to be administered if he hath so much thereof in his hands to be administered, and if he hath not so much thereof in his hands to be administered, then \$ _____, being the costs aforesaid to be levied out of the proper goods and chattels, lands and tenements of the defendant.

(Formal parts: see No. 1324.)

855

Petition under Rule 642, to obtain execution against personal representative on a suggestion of devastavit. (a)

1. The petitioner recovered a judgment of this Honourable Court in this action against the defendant for the sum of \$ _____ and costs to be levied (*set out terms of judgment as in preceding form*).

2. Execution was issued upon the said judgment against the goods and chattels and lands and tenements, which were of the said _____, deceased, in the hands of the said defendant to be administered, and against the defendant's own proper goods and chattels, lands and tenements, to recover the said costs.

3. The said writs were on the _____ day of _____, duly placed in the hands of the Sheriff of the County of _____ for execution, he being the Sheriff of the County in which the said defendant resided, and the said Sheriff on the _____ day of _____, returned to the said execution against the goods and chattels *nulla bona*, and to the said execution against lands and tenements "no lands," and no part of the said judgment debt and costs has been recovered by your petitioner from the said defendant, and the whole amount thereof is still due and unsatisfied.

4. The petitioner suggests and the fact is that the defendant has wasted the property of the said _____ come to his hands to be administered, by reason whereof the said judgment debt and costs have not been leviable out of the property

(a) No express provision is made by the Rules for obtaining execution against a personal representative guilty of a devastavit. Having regard to the provisions of Rules 3 and 642 the relief would seem properly obtainable upon a petition filed under Rule 642. The petition should be served on the defendant. *Semble*, it would not be open to him to shew that he had fully administered, but if he could shew that there were assets in his hands which he had pointed out to the sheriff, out of which the moneys might be levied, that might be an answer. See Wm. Exors., 9th ed., p. 1863, *et seq.*

of the said deceased, and by reason thereof the said defendant has become legally bound to pay the amount of the said judgment debt and costs out of his own property.

Your petitioner therefore prays that the defendant may be ordered to pay the sum of \$ for the said debt and also the costs of this application to be taxed and that in default the petitioner may be at liberty to issue execution to be levied out of the defendant's own proper property;

Or, that the said petitioner may have such further or other relief as to this Honourable Court shall seem meet.

The petition should be indorsed with the usual notice: see Form 1325, and should be served on the defendant or his solicitor.

(Formal parts: see No. 744.)

1. I have read the petition now shewn to me marked A., and I say that the facts set forth in the said petition are true. **856** Affidavit in support of petition.

2. The judgment referred to in paragraph numbered 1 of the said petition is now shewn to me and marked B.

3. Now shewn to me marked C. and D. respectively are the writs of execution issued upon the said judgment referred to in paragraph numbered 2 of the said petition, with the Sheriff's returns thereto respectively thereon indorsed.

(Formal parts: see No. 908.)

1. This Court doth order that the defendant do forthwith pay to the plaintiff the sum of \$ (*the amount due to date of order upon the judgment for principal, interest and costs*), and also \$ for his costs of this application, and in default thereof that the plaintiff be at liberty to issue execution therefor, to be levied against the proper property of the said defendant. **857** Order on petition for payment by personal representative personally in case of devolvement. (b)

(Formal parts: see No. 822.)

1. It is adjudged [*or. This Court doth order and adjudge*] that the plaintiff do recover against the defendant as executor [*or. administrator*] of the estate and effects of A.B., the sum of \$ and his costs to be taxed, \$ (*amount of assets*) **858** Judgment against personal representative where assets for part admitted or proved.

(b) Upon this order execution would issue in the usual form against the defendant's own goods and lands.

admitted) part of the said moneys to be levied out of the property of the said *A.B.*, now in the hands of the said defendant to be administered and \$ the residue thereof, to be levied out of the assets of the said *A.B.*, deceased, which shall hereafter come to the hands of the said defendant as such executor [*or, administrator*] aforesaid to be administered.

(*Formal parts: see No. 822.*)

859

Judgment against personal representative for assets *in futuro* when *plene administravit* is admitted or proved, or where plaintiff admits that there are no assets. (a)

1. It is adjudged [*or, This Court doth order and adjudge*] that the plaintiff do recover against the defendant as executor [*or, administrator*] of the estate and effects of *A.B.*, deceased, the sum of \$ damages, and his costs to be taxed to be levied out of the property of the said *A.B.*, which shall hereafter come to the hands of the said defendants as executor [*or, administrator*] as aforesaid to be administered.

(*Formal parts: see No. 1324.*)

860

Petition for leave to issue execution in respect of assets *quando acciderint*. (b)

The petitioner recovered a judgment of this Honourable Court in this action against the defendant for the sum of \$ and costs to be levied (*set out terms of judgment as in preceding Form.*)

2. Since the recovery of the said judgment a large amount of property real and personal belonging to the estate of the said deceased and sufficient to satisfy wholly or in part your petitioner's said judgment has come to the hands of the said defendant to be administered, and is properly applicable to the payment of your petitioner's said judgment.

3. The said judgment has not been paid or satisfied, and the whole amount thereof is still due and unpaid to your petitioner.

The petitioner therefore prays that the defendant may be ordered to pay the amount of the said judgment debt and costs, together with the costs of this application to be paid out of the assets of the estate of the

(a) On a judgment in this form it would appear to be necessary before execution can issue that a further proceeding should be taken to obtain the leave of the Court on proof that since the judgment assets have come to the hands of the defendant: *Wm. Exors.*, 9th ed., p. 1870, and see note to Form 854 and Forms following.

(b) See note to Form 854.

said deceased now in his hands to be administered and in default thereof that your petitioner may be at liberty to issue execution herein against the said defendant for the amount of the said judgment debt and costs, including the costs of this application to be levied out of the property of the said come to the hands of the said defendant to be administered if he hath so much thereof, and if he have not so much thereof then that the said costs be levied out of the defendant's own property. (c)

The affidavit in support should prove the facts stated in the petition. **861**
Affidavit in support.

(Formal parts: see No. 908.)

1. This Court doth order that the defendant do forthwith pay to the plaintiff out of the assets of the estate of deceased, in his hands to be administered, the sum of \$ (amount of assets admitted or proved or so much thereof as necessary to satisfy claim of plaintiff), and in default thereof the plaintiff be at liberty to issue execution therefor to be levied out of the property of the said deceased, in the hands of the said defendant to be administered, if he hath so much thereof in his hands to be administered and if he hath not so much thereof in his hands then \$ being the costs of this application to be levied out of the proper property of the said defendant.

FATAL ACCIDENTS ACT.

(Formal parts: see No. 822.)

2. This Court doth order and adjudge that the plaintiff do recover from the defendants the sum of \$ **863**
Judgment under Lord Campbell's Act, R.S.O. c. 166.

(c) The petition should be indorsed with the usual notice: see Form 1325, and should be served on the defendant or his solicitor.

(d) Upon this order if the sheriff be unable to levy the amount from the assets of the deceased, proceedings as upon a *devastavit* would seem to be necessary as in the case of a judgment: see Forms 855 *et seq.*

[*Or, where the plaintiff is an infant.*

2. This Court doth order and adjudge that the plaintiff do recover against the defendants the sum of \$1,000, to be paid into Court by the defendants to the credit of this action. *If so, subject to the further order of this Court, or as may be.*]

3. [And this Court doth further order and adjudge that the sum of \$500 already paid into Court by the defendants and interest (if any) accrued thereon be applied *pro tanto* in payment of the said \$1,000.]

4. And this Court doth further order and adjudge that the defendants do pay to the plaintiff his costs of this action forthwith after taxation thereof.

[*Or where there are infants and adults interested in the moneys recovered*—And it appearing by the affidavit of filed that the infant children of the said *X.Y.*, deceased, were born on the following days, namely, *G.H.* on the day of , and *J.K.* on the day of .

2. This Court doth order and adjudge that the plaintiff do recover against the defendants the sum of \$1,000.

3. And this Court doth apportion the said sum of \$1,000 as follows, namely:

To the plaintiff <i>A.B.</i>	\$500
To plaintiff <i>C.D.</i>	50
To <i>E.F.</i> , son of the said <i>X.Y.</i>	50
To the infant plaintiff <i>G.H.</i>	200
To the infant plaintiff <i>J.K.</i>	200

3. And this Court doth order and adjudge that the shares of the said infants be paid into Court to the credit of this action, subject to the order of this Court, and be paid out to them respectively with the interest accrued thereon as they shall respectively attain their majority, unless this Court shall in the meantime make other order concerning the same.

FORECLOSURE, SALE AND REDEMPTION.

Form of Judgment on Praecipe for Foreclosure or Sale, ACCOUNT TAKEN BY REGISTRAR and Orders for Immediate Payment and Delivery of Possession. (Rule 596). (a)

(Title, Date, &c., as in No. 802.)

864

Praecipe judgment. Foreclosure or sale, with account taken. (a)

1. Upon the application of the plaintiff under Rule No. 596 of the Rules of the Supreme Court, and upon reading the writ of summons issued in this action, and indorsed under

(a, Con. Rules 1897, Form 154.

Rule No. 141 [and the statement of claim (*if any*) and statement of defence *where the facts entitling the plaintiff to judgment are admitted by the defence*] and an affidavit of , filed, &c. [*where judgment is obtained by default of appearance or defence add*, And an affidavit of as to the service of the said writ on the defendant, and no appearance having been entered in the said action [*or*, and the defendant having made default in delivering a defence] as by the [books in the office of the at appears];

2. This Court finds that the subsequent interest at the rate of per centum per annum on the sum of principal money secured by the indenture of mortgage in the writ of summons [*or*, pleadings] mentioned, up to the day of next, being the time appointed for payment as hereinafter mentioned, amounts to and that the costs of the plaintiff amount to which said subsequent interest and costs being added to the sum of claimed by the indorsement on the writ served on the defendant make together the sum of .

3. And upon the said defendant paying the said sum of into the bank of at the between the hours of ten o'clock in the forenoon and one o'clock in the afternoon of the day of next, to the joint credit of the plaintiff and the Accountant of the Supreme Court of Judicature [*where order for payment granted insert*, or in case the plaintiff shall (*where judgment is for sale add*, before the sale hereinafter directed shall have taken place) recover the amount due to him under the order for payment hereinafter contained], it is ordered and adjudged (subject to the provisions of section 2 of *The Act respecting Mortgages of Real Estate*). that the said plaintiff do assign and convey the mortgaged premises, and deliver up all documents relating thereto;

4. But in default of the said defendant making such payment by the time aforesaid, it is ordered and adjudged [*where judgment is for foreclosure, after "adjudged," add "that the said defendant do stand absolutely debarred and foreclosed of and from all equity of redemption in and to the mortgaged premises;" where judgment is for sale, then after the word "adjudged," add "that the said premises be sold, with the approbation of the Master of the Supreme Court of Judicature at ."*]

5. (*If judgment is for foreclosure, omit this clause*). And it is further ordered and adjudged that the purchasers do pay

their purchase money into Court, to the credit of this cause, and that the same when so paid in be applied in payment of what has been found due to the said plaintiff together with subsequent interest and subsequent costs, to be computed and taxed by the said Master, and that the balance do abide the further order of the Court.

6. (*Where judgment is for immediate payment add:*) And it is further ordered and adjudged that the defendant do forthwith pay to the plaintiff the sum of being the amount due to him at the date hereof for principal money, interest and costs.

7. (*Where judgment is for recovery of possession add:*) And it is further ordered and adjudged that the defendant do forthwith deliver to the plaintiff, or to whom he may appoint, possession of the mortgaged premises, or of such part thereof as may be in the possession of the said defendant .

(*Conclude as in No. 802, except the memorandum as to costs.*)

Form of Judgment on Praecipe for Sale or Foreclosure WITH REFERENCE AS TO INCUMBRANCES, &c., and orders for Immediate Payment and Delivery of Possession. (Rule 596.)

[*Title, Date, &c., as in No. 802.*]

865

Praecipe.
Foreclosure or
sale, with
reference as to
incumbrances.
(a)

1. Upon the application of the plaintiff under Rule No. 596, of the Rules of the Supreme Court, and upon reading the writ of summons issued in this action, and indorsed under Rule No. 141 [and the statement of claim (*if any*) and the statement of defence *where the facts entitling the plaintiff to judgment are admitted by the defence*], and an affidavit of, &c., filed, &c. [*where judgment is obtained by default of appearance or defence add, And an affidavit of, etc., filed, &c., of service of the said writ on the defendant, and no appearance having been entered in the said action (or, and the defendant having made default in delivering a defence) as by the books in the Central Office (or, the office of the at) appears*];

2. It is ordered and adjudged that all necessary inquiries be made, accounts taken, costs taxed, and proceedings had for redemption or sale [*or, redemption or foreclosure*] and that

for these purposes this cause be referred to the Master of the Supreme Court at

3. (*Where judgment is for immediate payment add, And it is further ordered and adjudged that the defendant do forthwith pay to the plaintiff the sum of \$ being the amount due to him for principal money, interest and costs at the date hereof; and upon payment of the amount due to the plaintiff [when judgment is for sale, add, before the sale hereinbefore directed shall have taken place] that (subject to the provisions of section 2 of The Act respecting Mortgages of Real Estate) the plaintiff do assign and convey the mortgaged premises, and deliver up all documents relating thereto.*

[*It will be seen that this clause only provides for payment of the costs up to the judgment, and the costs of reference cannot be recovered thereunder; in practice the following form is therefore frequently used, viz.: 3. [Where judgment is for immediate payment add, It is further ordered and adjudged that the defendant do forthwith after the making of the Master's report pay to the plaintiff what shall be found due to him for principal money, interest and costs at the date of the said report, and upon payment of the amount due to him (where judgment is for sale add, before the sale hereinbefore directed shall have taken place) that the plaintiff do assign and convey the mortgaged premises, and deliver up all documents relating thereto.]*

4. [*Where judgment is for recovery of possession add, And it is further ordered and adjudged that the defendant do forthwith deliver to the plaintiff, or to whom he may appoint, possession of the lands and premises in question in this cause, or of such part thereof as may be in the possession of the said defendant.]*

(*Conclude as in No. 802, except the memorandum as to costs.*)

Con. Rules, 1888, Form 182.

(*Formal parts as in No. 902.*)

Upon the application of the above-named plaintiff and upon hearing the solicitor for the applicant and upon reading the pleadings and affidavits of

1. And an account of interest having been taken upon the principal sum of up to the day hereinafter appointed for payment the same amounts to

866
Judgment for
foreclosure
against infants
(account
taken).

and the plaintiff's costs having been taxed, including the costs of the guardian of the infant defendant at which have been paid by the plaintiff and added to own the said sums when added together make the sum of

2. It is ordered and adjudged that upon the said defendant paying the said sum into the bank at between the hours of ten o'clock in the forenoon and one o'clock in the afternoon of the day of next to the joint credit of the plaintiff and the Accountant of the Supreme Court of Judicature for Ontario, the plaintiff do, subject to the provisions of section 2 of *The Act respecting Mortgages of Real Estate*, assign and convey the mortgaged premises in question in this cause to the defendant or to whom may appoint, free and clear of all incumbrances done by , and deliver up all deeds and writings in custody or power relating thereto upon oath to the defendant or to whom may appoint.

3. And it is further ordered and adjudged that in default of the defendant making such payment by the time aforesaid do stand absolutely debarred and foreclosed of and from all right, title and equity of redemption of, in and to the said mortgaged premises.

4. And this order is to be binding upon the infant defendant unless shall within six months after attain the age of twenty-one years, on being served with notice hereof, shew unto this Court good cause to the contrary.

In the High Court of Justice.

(Shortened style of cause.)

867

Notice to bind infant after coming to age, to be indorsed on copy of judgment.

Take notice, that unless you, within days after the service thereof upon you, shew unto the High Court of Justice for Ontario, good cause why the within judgment [*or*, order] should not be binding upon you, you will be bound by the said judgment [*or*, order], and the same will stand and be absolute against you.

Dated, &c.

G.R.,

Solicitor for the plaintiff.

To the Defendant }
A.B. }

(*Formal parts: see No. 902.*)

1.) *As in Form*

2.) *No. 866.*

3. And it is further ordered and adjudged that upon default of the defendant making such payment by the time aforesaid the mortgaged premises be sold and that for this purpose this action be referred to the Master of the Supreme Court of Judicature at

868

Judgment for sale against infants, account taken.

4. And it is ordered and adjudged that the purchaser do pay his purchase money into Court to the credit of this cause, subject to the order of this Court; And that the same when paid in be applied in payment of what is due the plaintiff together with subsequent interest and subsequent costs including the subsequent costs of the said guardian, when computed and taxed, and that the residue if any do abide further order.

(*Formal parts: see No. 902.*)

Upon the application of the above-named plaintiff and upon hearing the solicitor for the applicant and upon reading the pleadings and affidavits of

869

Judgment for foreclosure or sale against infants, with a reference as to incumbrances, etc.

1. It is ordered and adjudged that the Master of the Supreme Court of Judicature for Ontario do inquire and state whether a sale or foreclosure of the mortgaged premises in question in this cause would be more beneficial for the infant defendant.

2. And it is further ordered and adjudged that all necessary inquiries be made, accounts taken, costs taxed including the costs of the guardian *ad litem* of the said infant which are to be paid by the plaintiff and added to own, and proceedings had for redemption or foreclosure, or for redemption or sale of the said premises, according as the said Master may find foreclosure or sale more beneficial for the said infant defendant.

3. And it is further ordered and adjudged, in the event of the said Master finding that a sale will be more beneficial, that the purchaser do pay his purchase money into Court subject to the order of this Court: And that the same when so paid in be applied in payment of what is due to the plaintiff together with subsequent interest and subsequent costs including the subsequent costs of the said guardian, when computed and taxed, and that the residue if any do remain in Court subject to further order.

870

Judgment
after a trial
for foreclosure
and posses-
sion.

(Formal parts: see No. 822.)

1. This action coming on for trial this day before this Court at the sittings holden at for trial of actions without a jury in presence of counsel for the plaintiffs and the defendants *A.* and *B.*, and the Official Guardian *ad litem* for the infant defendants, no one appearing for the other defendants as to whom the pleadings have been noted as closed, upon hearing read the pleadings and upon hearing the evidence adduced and what was alleged by counsel aforesaid.

2. This Court doth order and adjudge that all necessary inquiries be made, accounts taken, costs taxed and proceedings had for redemption or foreclosure, and that for these purposes this action be referred to the Master of this Court at .

3. And this Court doth further order and adjudge that the costs of the Official Guardian, to be taxed, be paid by the plaintiffs and added to the plaintiffs' costs of this action.

4. And this Court doth order and adjudge that the defendants do forthwith deliver to the plaintiffs or whom he may appoint possession of the lands and premises in this action or such part thereof as may be in the possession of the defendants or any of them.

(Formal parts: see No. 822.)

871

Judgment
in favour of a
mortgagee
who has been
fraudulently
induced to
advance
money. (a)

1. This Court doth declare that the defendants are liable for and bound to pay to the plaintiffs the difference between the value of the lands and premises in the pleadings mentioned and the amount advanced by the plaintiff upon the security of the mortgage made by the defendant *M.* to the plaintiffs, together with the interest thereon and the costs incurred by the plaintiffs in attempting to sell the lands under the power contained in the said mortgage, and doth order and adjudge the same accordingly.

2. And this Court doth further order and adjudge that it be referred to the Master of this Court [at] to take an account of the amount of the principal sum and interest secured to the plaintiffs under and by virtue of the mortgage aforesaid together with the costs and expenses incurred by them in attempting to sell the said lands, and also an account of the value of said lands and premises.

(a) See *Hamilton & Provident Loan Society v. Milne*, before Blake, V.-C., 4th March, 1881.

3. And this Court doth further order and adjudge that the defendants do, in the event of their not electing as hereinafter mentioned, forthwith pay to the plaintiffs the amount secured by the said mortgage and the interest aforesaid, together with the costs and expenses aforesaid after deducting therefrom the amount of the value of the said lands and premises.

4. And this Court doth further order and adjudge that the defendants do pay to the plaintiffs the costs of this action forthwith after taxation thereof by the said Master.

5. And this Court doth further order and adjudge that the said defendants shall be at liberty upon their electing so to do before the said Master, to pay to said plaintiffs the amount advanced by them upon the security of the said lands with interest thereon and the costs incurred by said plaintiffs in attempting a sale of said lands aforesaid and also their costs of this action, such amount and costs to be computed and taxed by said Master who is to fix a time for payment of such amount by the said defendants to the said plaintiffs one month from the making of his report.

6. And this Court doth further order and adjudge that upon the defendants making such payment, the said plaintiffs do assign the said mortgage security, or re-convey the said mortgaged premises to the said defendants or defendant making such payment by a good and sufficient deed of conveyance to be settled by the said Master in case the parties differ about the same, and do deliver upon oath to the said defendants or defendant making full payment, or to whom he or they may appoint all deeds and papers in their custody or power relating to said lands.

7. But in default of the defendants making such payment after they shall have elected so to do, this Court doth further order and adjudge that the said defendants do forthwith after the time shall have elapsed for making such payment pay to the plaintiffs the amount directed to be paid by the third and fourth paragraphs hereof with subsequent interest and subsequent costs to be computed and taxed by said Master.

(*Formal parts: see No. 968.*)

1. Upon the application of the defendants
 sequent incumbrancers added as parties defendants in the
 Master's office, and [the applicants having deposited in Court
 to the credit of this action pursuant to the Consolidated Rules

sub- 872
 Order for sale
 in lieu of fore-
 closure as
 directed by
 judgment.

of Court, *or*, the plaintiffs by their solicitors waiving the deposit of] the sum of eighty dollars to secure a sale of the mortgaged premises in this action as by the [certificate, *or*, consent] produced appears, and the applicant alleging that the Master to whom the action stands referred has not yet settled his report.

2. It is ordered that all necessary inquiries be made, accounts taken, costs taxed, and proceedings had for the redemption or sale of the mortgaged premises instead of for the redemption or foreclosure thereof as by the judgment herein directed.

(*Formal parts: see No. 822 or 908.*)

873
Judgment for
immediate
sale and
possession.

2. This Court doth order and adjudge that all necessary inquiries be made, accounts taken, costs taxed, and proceedings had, for the immediate sale of the mortgaged premises in question herein without the appointment of any day for redemption of the said mortgaged premises, and that for these purposes this action be referred to the Master of the Supreme Court of Judicature for Ontario at

3. And this Court doth further order and adjudge that the defendants do forthwith deliver to the plaintiff or to whom he may appoint possession of the mortgaged premises or of such part thereof as may be in possession of the said defendants respectively.

(*Formal parts: see No. 821 or 822.*)

874
Judgment for
foreclosure in
favour of a
derivative
mortgagee.

2. This Court doth order and adjudge that the defendant (*original mortgagor*) do pay to the plaintiff the sum of \$ being the amount due to the plaintiff under the indenture of mortgage in the statement of claim firstly mentioned, for principal money and interest thereon, up to the date hereof.

3. And this Court doth further order and adjudge that the defendant *D.M. (the derivative mortgagor)* do forthwith pay to the plaintiff the sum of \$ part of the said sum of \$ being the amount due to the plaintiff under the indenture of agreement in the statement of claim lastly mentioned, for principal money and interest up to the date hereof.

4. And this Court doth further order and adjudge that the defendants do forthwith pay to the plaintiff the sum of \$ his taxed costs of this action up to the date hereof.

5. And this Court having caused an account to be taken of the amount due to the plaintiff upon the mortgage security (*derivative mortgage*) made by the defendant *D.M. (derivative mortgagor)* in the agreement in the statement of claim lastly mentioned, doth find that there is due for principal money \$500 and interest up to the date hereof the sum of \$146.74, and for subsequent interest at the rate of 5 per cent. per annum from the date hereof up to the day of 19 , the sum of \$12.50 and the costs of the plaintiff having been taxed at \$132.54, such principal money, interest and costs when added together make the sum of \$791.78.

6. And this Court having caused an account to be taken of the amount due to the defendant *D.M. (the original mortgagee)* upon the mortgage security in the statement of claim firstly mentioned (*original mortgage*) doth find that there is due by the defendant *O.M. (the original mortgagor)*, for principal money \$500, and for interest up to the date hereof the sum of \$248.12 and for subsequent interest at the rate of 5 per cent. per annum from the date hereof up to the day of 19 , the sum of \$12.50, and the costs of the plaintiff having been taxed at \$132.54, such principal money, interest and costs when added together make the sum of \$893.16.

7. And upon the said defendant *O.M. (original mortgagor)* paying the said last mentioned sum of \$893.16, into the principal office of bank in the City of Toronto on the day of between the hours of o'clock in the forenoon, and o'clock in the afternoon as follows, that is to say: \$791.78, parcel of the said sum to the joint credit of the plaintiff and the Accountant of the Supreme Court of Judicature for Ontario, and \$101.38 being the residue of the said sum to the joint credit of the defendant *D.M. (original mortgagee and derivative mortgagor)*, and the said Accountant of the Supreme Court of Judicature for Ontario, this Court doth order and adjudge that the plaintiff and the defendant, *D.M. (derivative mortgagor)*, do assign and convey the mortgaged premises in the pleadings mentioned, and do deliver upon oath all deeds and writings in their custody or power relating to the said lands and premises to the said defendant *O.M. (original mortgagor)*, or to whom he may appoint.

8. But in default of the said defendant *O.M. (original mortgagor)*, making said payments by the time aforesaid, this Court doth order and adjudge that the said defendant *O.M. (original mortgagor)* do stand absolutely debarred and foreclosed of and from all right, title and equity of redemption in and to the said mortgaged premises, and that it be referred to

the Master in Chambers to take a subsequent account of the amount due to the plaintiff in respect of the said mortgage and agreement so made by the said defendant, *D.M. (derivative mortgagor)* as aforesaid, and tax to the plaintiff the subsequent costs of this action, and appoint a day for redemption by the defendant, *D.M. (derivative mortgagor)*, one (a) month after the date of taking of said subsequent account.

9. And in default of the defendant, *D.M. (derivative mortgagor)*, making such payments by the time so directed, this Court doth order and adjudge that the said defendant, *D.M. (derivative mortgagor)*, do stand absolutely debarred and foreclosed of and from all right, title and equity of redemption of, in and to the mortgaged premises.

Form of Judgment on præcipe for Redemption.

875

Præcipe
judgment for
redemption.
(b)

(Title, Date, &c., as in No. 802.)

1. Upon the application of the plaintiff, under Rule No. 596, of the Rules of the Supreme Court, and upon reading the writ of summons issued in this action [and the statement of claim (if any) and statement of defence where the facts entitling the plaintiff to judgment are admitted by the defence], and an affidavit of, &c., filed, &c. [where judgment is obtained by default of appearance or defence, add and an affidavit of, &c., filed, &c., of service of the said writ on the defendant, and no appearance having been entered in the said action (or, and the defendant having made default in delivering a defence) as by the (books in the office of the at) appears];

2. It is ordered and adjudged that all necessary inquiries be made, accounts taken, costs taxed, and proceedings had for the redemption of the premises in question, and that for this purpose the cause be referred to the Master of the Supreme Court of Judicature at

3. And (subject to the provisions of section 2 of the *Act respecting Mortgages of Real Estate*), it is further ordered and adjudged that upon the plaintiff paying to the defendant what shall be found due to him, or in case nothing shall be found due to the defendant then forthwith after the confirmation of the said Master's report, the defendant do re-convey

(a) See Con. Rule 393.

(b) Con. Rules 1897, Form 155.

the said mortgaged premises, and deliver up all documents relating thereto.

4. And it is further ordered and adjudged that in case the plaintiff shall make default in payment as aforesaid of what may be found due to the defendant that the plaintiff's action do stand dismissed out of this Court, with costs to be paid by the plaintiff to the defendant forthwith after taxation thereof.

5. And it is further ordered and adjudged that in case nothing shall be found due from the plaintiff to the defendant that the defendant do pay the plaintiff his costs of this action forthwith after the taxation thereof, and in case any balance shall be found due from the defendant to the plaintiff that the defendant do pay such balance to the plaintiff forthwith after the confirmation of the Master's report.

(Conclude as in No. 802, except as to the memorandum as to costs.)

Con. Rules, 1888, Form 184.

(Formal parts: see No. 822.)

2. This Court doth declare that the release of the equity of redemption executed by the plaintiff as in the pleadings mentioned is null and void, and that the same ought to be set aside and delivered up to the plaintiff to be cancelled and that the plaintiff notwithstanding the said release is entitled to redeem the lands and premises in the pleadings mentioned, and doth order and adjudge the same accordingly.

876

Judgment for redemption after a trial where the right to redeem was disputed.

3. And this Court doth further order and adjudge that the Master of this Court [at] do take an account of what is due from the plaintiff to the defendant or from the defendant to the plaintiff on the footing of the agreement in the statement of claim mentioned, and if anything be found due to the defendant, the said Master is to tax to the plaintiff his costs of this action except as of a common redemption action, and to the defendant his costs as of a common redemption action, and the costs of the plaintiff are to be deducted from the amount found due to the defendant for principal, interest and costs.

4. And upon the plaintiff paying to the defendant what if anything shall be certified to remain due for principal money, interest and costs, within 6 months after the said

Master shall have made his report, at such time and place as the said Master shall direct, or, in case nothing shall be found due from the plaintiff to the defendant, this Court doth order and adjudge that the defendant do re-convey the mortgaged premises in the pleadings mentioned free and clear of all incumbrances done by him and deliver up all deeds, papers and documents, in his possession or power relating thereto on oath to the plaintiff or to whom he shall appoint; and in default of payment as aforesaid of what if anything may be found due to the defendant, this Court doth order and adjudge that this action be dismissed out of this Court with costs as of a common redemption action to be paid by the plaintiff to the defendant forthwith after taxation thereof.

5. And in case it shall appear that there is nothing due to the defendant, this Court doth further order and adjudge that the defendant do pay to the plaintiff his whole costs of this action forthwith after taxation thereof. And in case a balance shall be found due from the defendant to the plaintiff then that the said defendant do pay such balance to the plaintiff forthwith after the confirmation of the Master's report.

FRAUDULENT CONVEYANCE.

877
Judgment
setting aside
a fraudulent
conveyance of
land at suit of
an execution
creditor.

2. This Court doth declare that the deed or conveyance from the defendant *W.A.T.*, to the defendant *F.M.T.* in the pleadings mentioned, of the lands and premises in question in this cause, is fraudulent and void as against the plaintiffs, and the other creditors of the said defendant *W.A.T.*, and doth order and adjudge the same accordingly.

3. And this Court doth further order and adjudge that it be referred to the [Master in Ordinary of this Court, *or as may be*] to inquire and state whether any persons other than the plaintiffs, have any lien, charge or incumbrance (other than prior mortgages), upon the said lands, and to cause such persons (if any), to be served with process under the Rules of the Supreme Court of Judicature in that behalf, and that the said Master do take an account of what is due to the plaintiffs, and such incumbrancers as may come in and contribute to the expenses of this action for principal money and interest, and tax to them their costs of this action, and settle their priorities, and appoint a time and place for payment.

4. And upon the said defendants, or either of them, paying to the plaintiffs and the said incumbrancers what shall be so found due for principal, interest and costs, within one month after the said Master shall have made his report at such time and place as the said Master shall appoint, this Court doth order and adjudge that the plaintiff and such other incumbrancers do assign and convey the said lands free and clear of all incumbrances done by them, and deliver up all deeds and writings in their custody or power relating thereto upon oath to the defendants or defendants making such payment, or to whom he, she or they may appoint, or enter up satisfaction upon the roll of their respective judgments as the case may require.

5. But in default of payment being made as aforesaid, this Court doth order and adjudge that the said lands be sold with the approbation of the said Master, and the purchasers are to pay their purchase money into Court to the credit of this action, subject to the order of this Court, and the same when so paid in is to be applied:—First—In payment to the plaintiffs of their costs of this action as between party and party, or such part thereof as may not be paid by the defendants as hereinafter directed. Secondly—In payment of what shall be found due to the plaintiffs and the said incumbrancers according to their priorities, together with subsequent interest and subsequent costs, to be computed and taxed by the said Master.

6. And this Court doth further order and adjudge that the said Master do also take an account of the costs of the plaintiffs as between solicitor and client, and the costs, charges, expenses and disbursements of the plaintiffs of and incidental to this action over and above the plaintiffs' costs, as between party and party, and apportion the difference among the incumbrancers entitled to share in the said moneys, including the plaintiffs, in proportion to the amounts realized for them under this judgment, and the amount of such difference is to be paid out of the shares of the said incumbrancers, including the plaintiffs in said moneys according to such apportionment.

7. And this Court doth further order and adjudge that the defendants do pay to the plaintiff his costs of this action up to and inclusive of this judgment forthwith after taxation thereof.

(*Formal parts: see No. 822.*)

(*For style of action: see No. 30.*)

878

Judgment in an action by a simple contract creditor to set aside a fraudulent conveyance.

1. This Court doth declare that the deed of conveyance from to in the pleadings mentioned of the lands and premises in question in this cause is fraudulent and void as against the plaintiff and the other creditors of the said , and doth order and adjudge the same accordingly.

2. And this Court doth further order and adjudge that it be referred to the [Master of this Court at] to inquire and state whether any persons other than the plaintiff are creditors of the defendant and whether any persons have any lien, charge or incumbrance (other than prior mortgages) upon the said lands, and to cause such persons (if any) to be served with process under the Rules of the Supreme Court of Judicature in that behalf; and the said Master is to take an account of what is due to the plaintiff and such creditors and incumbrancers as may come in and contribute to the expenses of this action for principal money and interest, and tax to them their costs of this action, and settle their priorities.

3. And this Court doth further order and adjudge that the said Master do appoint a time and place for payment one year from the date of his report, unless it shall appear that any such creditor has a writ of *fiери facias* against lands in the hands of the Sheriff against the lands of the said defendant (*the debtor*), which he would be entitled to enforce at an earlier date, and in such case the said Master shall appoint such earlier time for payment of said moneys.

4. And upon the said defendants or either of them paying to the plaintiff and the said creditors and incumbrancers what shall be so found due for principal, interest and costs, at such time and place as the said Master shall appoint, this Court doth further order and adjudge that the plaintiff and such other creditors and incumbrancers do assign and convey the said lands free and clear of all incumbrances done by them, and deliver up all deeds and writings in their custody or power relating thereto upon oath to the defendant or defendants making such payment, or to whom he, she or they may appoint, or enter up satisfaction upon the roll of their respective judgments, or release and discharge the said debts, as the case may require.

5. And this Court doth further order and adjudge that in default of payment being made as aforesaid, the said lands

be sold with the approbation of the said Master, and that the purchaser or purchasers do pay his, her or their purchase money into Court to the credit of this action, subject to the order of this Court, and that the same when so paid in be applied: First—In payment to the plaintiff of his costs of this action as between party and party, or so much thereof as may not be personally paid by the defendant (*the debtor*) as hereinafter directed. Secondly—In payment of what shall be found due to the plaintiff, and the said creditors and incumbrancers according to their priorities, together with subsequent interest and subsequent costs, to be computed and taxed by the said Master.

6. And this Court doth further order and adjudge that the said Master do take an account of the costs of the plaintiff as between solicitor and client, and the costs, charges, expenses and disbursements of the plaintiff of and incidental to this action over and above the plaintiff's costs, as between party and party, and apportion the difference among the creditors and incumbrancers entitled to share in the said moneys including the plaintiff, in proportion to the amounts realized for them under this judgment, and that the amount of such difference be paid out of the shares of the said creditors and incumbrancers, including the plaintiff, in the said moneys according to such apportionment.

7. And this Court doth further order and adjudge that the defendant (*the debtor*) do pay to the plaintiff the amount found due to him by the said Master forthwith after the confirmation of the Master's report.

8. And this Court doth further order and adjudge that the defendants do pay to the plaintiff his costs of this action up to and inclusive of this judgment forthwith after taxation thereof.

(*Formal parts: see No. 822.*)

1. This action coming on for trial this day at the sittings holden for the trial of actions at Hamilton in presence of counsel for all parties upon opening the matter, upon hearing read the pleadings, and upon hearing the evidence adduced, and what was alleged by counsel aforesaid.

2. This Court doth declare that the conveyance of the lands and premises in the pleadings mentioned bearing date the 19th day of December, 19 , whereby the defendant *M.F.G.*

879

Judgment setting aside fraudulent conveyance, costs charged on land, and to be paid out of any sale under plaintiff's execution.

purported to convey the said lands to the defendant *T.F.M.*, was and is fraudulent and void as against the plaintiff and the other creditors of the defendant *M.F.G.*, and the said lands are liable to be sold in execution for the satisfaction of the claims of the plaintiffs and other creditors of the said defendant *M.F.G.*, and doth order and adjudge the same accordingly (a).

3. And this Court doth further order and adjudge that the [Master of this Court at *or as may be*] do take an account of the costs, charges, expenses and disbursements of the plaintiff, of and incidental to this action other than the plaintiff's costs as between party and party, and that the amount thereof and so much of the costs of this action as between party and party as the plaintiff may not realize under the provisions hereinafter contained, do constitute a lien or charge upon any moneys realized from the sale of the said lands, and be paid out of such moneys before distribution thereof among the creditors entitled to share therein.

4. And this Court doth further order and adjudge that the defendants do pay to the plaintiff his costs of this action forthwith after taxation thereof.

INDEMNITY.

(*Formal parts: see No. 822.*)

880

Judgment to
enforce con-
tract of in-
demnity.

1. This Court doth order that the plaintiff be at liberty if so advised to amend the indorsement on the writ of summons herein by interlining the words "and reciting" after the words "in pursuance of" and before the words "the said agreement," and by interlining the words "and for indemnity with respect thereto" after the words "upon said Lot No. 59" and before the words "and for all costs," or otherwise so as to make the said indorsement conform to the prayer of the statement of claim.

2. And this Court having caused an account to be taken of the amount due by the defendant in respect of the mortgage made by _____, the payment of which was assumed

(a) Where dower is released by fraudulent deed: see *Bank of Montreal v. Thomas*, 2 E. & A. 502.

Where plaintiff is an execution creditor a sale is usually ordered: *Ib.*, but where the plaintiff is only a simple contract creditor the judgment is confined simply to setting aside the deed: *Oliver v. McLaughlin*, 24 Ont. 41.

by the defendant as in the pleadings mentioned, doth find that there is due for principal money \$500 and for interest \$37.65, making together the sum of \$537.65.

3. And this Court doth order and adjudge that the defendant do forthwith pay into Court to the credit of this action, subject to the further order of this Court, the said sum of \$537.65; and the plaintiff is to be at liberty to apply upon notice to the said defendant for payment out of the said moneys to the party or parties entitled as he may be advised.

4. And this Court doth further order and adjudge that the plaintiff do recover against the defendant his costs of this action to be taxed.

LIEN OR CHARGE.

(*Formal parts: see No. 822.*)

881

2. This Court doth declare that the plaintiff is entitled to and hath a lien upon the lands and premises in the statement of claim herein mentioned for the value of the improvements put upon the said lands and premises by the said plaintiff, as in the statement of claim mentioned, and for the amount of the moneys paid by the said plaintiff upon a certain mortgage upon the said lands and premises mentioned in the said statement of claim, and for the costs of this action, and doth order and adjudge the same accordingly. Judgment to enforce a lien on land.

3. And this Court doth further declare that the plaintiff is entitled to recover from the defendant the full amount of moneys or money's worth expended by the said plaintiff in the support and maintenance of one in the said statement of claim mentioned together with the full amount of his (the plaintiff's) lien upon the said lands and premises and the costs of this action, and doth order and adjudge the same accordingly.

4. And this Court doth further order and adjudge that it be referred to the Master of this Court at
to inquire and state: (1) What is due to the plaintiff in respect of his lien aforesaid. (2) And also what is due to the said plaintiff for and in respect of the maintenance of the said , and to tax to him his costs of this action.

[*Where the defendant is personally liable*: 5. And this Court doth further order and adjudge that the defendant do pay to the plaintiff what shall be found due to him on the taking of the accounts aforesaid, together with his said costs forthwith after the confirmation of the said Master's report.]

6. And this Court doth further order and adjudge that in case the said defendant shall make default in paying to the plaintiff the amount which shall be found due to him in respect of his said lien together with his said costs as aforesaid, the said Master is to proceed (3) To inquire and state whether any person or persons, and who other than the plaintiff, except prior mortgagees (if any), has or have any lien, charge or incumbrance upon the said lands and premises, and he is to cause such persons (if any) to be made parties defendant to this action in his office. (4) And the said Master is to proceed to take a further account of the amount due to the said plaintiff in respect of his said lien and costs and also of what is due to such other incumbrancer or incumbrancers (if any) for principal and interest, and he is to tax to them their costs of this action, and also to settle their priorities, and to appoint a time and place for the payment of the same by the defendant within one month after the making of his report.

7. And this Court doth further order and adjudge that upon the defendant paying the amount which the said Master shall find to be due to the said plaintiff in respect of his said lien and costs, and to such other incumbrancer or incumbrancers (if any) of what shall be found due to them respectively at such time and place as the said Master shall appoint within one month after the said Master shall have made his report, the said plaintiff and incumbrancers (if any) do release and discharge their said liens, or convey and assign the said premises free from all incumbrances done by them, and deliver up all deeds and documents in their respective possession or power relating thereto upon oath to the said defendant or to whom he shall appoint or enter up satisfaction upon the rolls of their judgments, as the case may require.

8. And this Court doth further order and adjudge that, in default of the said defendant making such payment by the time aforesaid, the said lands and premises be sold, with the approbation of the said Master, and the purchasers are to pay their purchase money into Court to the credit of this action subject to the order of this Court, and all proper parties are to join in the conveyances to the purchasers as the said Master shall direct.

9. And this Court doth further order and adjudge that the purchase money, when so paid in, shall be applied: First—In payment to the said plaintiff of his costs of this action, together with subsequent costs to be taxed by said Master, or such part thereof as may not be recovered from the defendant under the order hereinbefore contained; Secondly, in payment to the plaintiff of the amount of his lien or such part thereof as may not have been recovered from the defendant under the order for payment hereinbefore contained, and to such other incumbrancer or incumbrancers (if any) of the amount the said Master shall find due and payable to them respectively by the said defendant for principal money, interest and costs (other than the costs of the plaintiff as aforesaid) according to their priorities, and the residue of the purchase money (if any) is to be paid to the said defendant.

(Formal parts: see No. 822.)

2. This Court doth declare that notwithstanding the registration of the discharge of the mortgage made by the plaintiff to the Company, in the pleadings mentioned, the plaintiff is entitled to a charge under the said mortgage made by the plaintiff to the Company, and bearing date the day of , upon the lands in question in this action, for all moneys paid by him or on his behalf since the death of *M.S.*, deceased, under or in respect of the said mortgage in priority to the mortgage given by the defendant *B.S.* to the defendant *C.*, for \$500 bearing date the day of , and registered the day of , and that the mortgage to the Company before mentioned notwithstanding the registration of such discharge is a valid and subsisting security in the hands of the plaintiff for the amount of such charge and doth order and adjudge the same accordingly.

882

Judgment vacating discharge of mortgage, and declaring mortgage to be a subsisting security.

3. And this Court doth further order and adjudge that all necessary inquiries be made, accounts taken, costs taxed, under the Company's mortgage, and the mortgage made by *M.S.* to the plaintiff in the pleadings mentioned, and proceedings had for redemption or foreclosure of the premises in question in this action, having regard to the declaration aforesaid, and that for these purposes this cause be referred to [the Master in Ordinary of this Court].

4. And this Court doth not see fit to make any order as to the costs of this action up to and inclusive of this judgment,

but doth order and adjudge that the subsequent costs shall be in the discretion of the said Master and paid as he shall direct (*or as may be ordered*).

MARRIED WOMEN.

(*Formal parts: see No. 822.*)

883

Form of judgment against a married woman. (a).

1. This Court doth order and adjudge that the plaintiff do recover \$ _____ and costs to be taxed against the defendant *M.W. (the married woman)*, such sum and costs to be payable out of the separate property of the said *M.W.*, as hereinafter mentioned and not otherwise.

2. And this Court doth further order and adjudge that execution hereon be limited to the separate property of the defendant *M.W.*, which she is now or may hereafter be entitled to, not subject to any restriction against anticipation (unless by reason of sec. 21 of "The Married Woman's Property Act" (b) such property shall be liable to execution notwithstanding such restriction) and to any property which the said *M.W.* may at any time hereafter while discoverd be possessed of or entitled to.

884

Another form.

1. This Court doth order and adjudge that the plaintiff do recover \$ _____, out of the separate property of the defendant *M.W.* to which she is now or may hereafter become entitled, not subject to any restriction against anticipation, or which by reason of sec. 21 of "The Married Women's Property Act" shall be liable to execution notwithstanding such restriction, or out of any property which the said defendant *M.W.* may at any time hereafter while discoverd be possessed of or entitled to.

Where money is ordered to be paid into Court by a married woman, there should be first a personal order for her to pay the money in, followed by the following clause:—

"But in default of payment as aforesaid execution as against the said defendant *M.W.* is to be limited to the separate property of the said defendant *M.W.* not subject, &c., &c., as above. (c)

(a) See *Scott v. Morley*, 20 Q. B. D. 120.

(b) R. S. O. 1897 c. 163.

(c) See *Boyd v. Robinson*, Ch. D., Jany., 1891.

MECHANICS' LIENS.

(Formal parts: see No. 825.)

This action coming on for trial before His Honour
 , Judge of the County Court of the County of
 pursuant to section 33 of the Revised Statutes of Ontario,
 1897, chapter 153, being "The Mechanics' and Wage-Earners'
 Lien Act," on the day of , in presence of
 counsel for all parties (*or as may be*), upon opening of the
 matter and upon hearing the evidence adduced, and what was
 alleged by counsel for the plaintiff and for the above-named
 defendants:—

885

Judgment to
 enforce mech-
 anics' lien
 against lease-
 hold.

1. This Court doth declare that the plaintiff is entitled to
 a lien under the Mechanics' and Wage-Earners' Lien Act
 upon all the estate, right, title, and interest of the defendant
M.R. (owner), in the lands hereinafter described [under the
 lease to her from the defendants *A.M.* and *J.M.*, bearing date
 the day of ,] which said land may be more
 particularly described as follows:—(*describe it with sufficient
 precision for registration purposes*). [*If so*, and also upon
 all the estate, right, title, and interest of the said defendants
A.M. and *J.M.* in the said lands above described (under lease
 from one *C.D.*, dated the day of , 19 ,
 and registered in the Registry Office of the of ,
 as Number)] for the sum of \$ and \$ for
 costs of lien, and the sum of \$, being the taxed costs
 of this action under the said Act, making in all the sum of
 \$1,223.74.

2. And this Court doth order and adjudge that upon the
 defendants *M.R.*, *A.M.*, and *J.M.*, or any or either of them
 paying into Court to the credit of this action the said sum of
 \$1,223.74 on or before the day of , A.D.
 19 , the lien of the plaintiff for the said sum upon the re-
 spective estates and interests in the said lands of the said de-
 fendants be and the same is hereby vacated and discharged, and
 the said moneys so paid into Court are to be paid out to the
 plaintiff in payment of his said lien.

3. But in case the said defendants *M.R.*, *A.M.*, and *J.M.*,
 shall make default in payment of the said moneys into Court

(d) For another form see Form 13 in the Schedule to the Me-
 chanics' and Wage-Earners' Lien Act, R. S. O. 1897, c. 153.

as aforesaid, this Court doth further order and adjudge that all the estate, right, title and interest of the said defendant *M.R.*, and of the defendants *A.M.* and *J.M.* respectively, in the said lands be sold with the approbation of [the Master in Ordinary of this Court], and that the purchase money be paid into Court to the credit of this action, and that all proper parties do join in the assignments and conveyances as the said [Master] shall direct.

4. And this Court doth further order and adjudge that the said purchase money be applied on or towards payment of the plaintiff's said claim, with subsequent interest and subsequent costs to be computed and taxed by the said Master, as the said [Master] shall direct.

5. And this Court doth further order and adjudge that in case the said purchase money shall be insufficient to pay in full the plaintiff's said claim the defendant *M.R.* do pay to the plaintiff the amount remaining due to him forthwith after the same shall have been ascertained by the said Master.

6. And this Court doth declare that the defendant *M.R.* is entitled in pursuance of the undertaking in the pleadings and in the evidence mentioned to be indemnified against the said sum of \$1,225.74 by the defendants, *A.M.* and *J.M.*, and doth order and adjudge the same accordingly.

7. And this Court doth further order and adjudge that the said defendants *A.M.* and *J.M.* do forthwith pay to the defendant *M.R.* her costs of this action, which are hereby fixed at \$40.00.

8. And this Court doth further order and adjudge that upon the said defendants *A.M.* and *J.M.* paying the said sum of \$1,225.74 into Court to the credit of this action, and the said sum of \$40.00 to the said *M.R.* for her said costs, the said defendants *A.M.* and *J.M.* shall be deemed to have satisfied and discharged all liability to indemnify the said defendant *M.R.* against the said claim of the plaintiff, but in default of the said defendants making such payments this Court doth reserve to the said *M.R.* leave to apply for such further relief as against her co-defendants or any or either of them as she may be advised.

9. And this Court doth further order and adjudge that this action be and the same is hereby dismissed as against the defendant *M.R.* without costs.

PATENT.

(*Formal parts: see No. 822.*)

2. This Court doth declare that the several patents mentioned in paragraph 2 of the plaintiffs' statement of claim herein dated respectively: the 29th day of March, 1889; the 30th day of April, 1889; the 2nd day of September, 1889; and the 23rd day of July, 1890, granted by Her late Majesty Queen Victoria as represented by the Superintendent-General of Indian Affairs under the great seal of Canada respectively, whereby Her Majesty purported to grant the following lands, namely:—(*describe them*) were and are *ultra vires* of the said Dominion of Canada and are null and void as against the above-named defendants and doth order and adjudge the same accordingly.

3. And this Court doth further declare that the several deeds and conveyances herein mentioned, all of which are made to the plaintiffs and are registered in the Registry Office for the District of _____ in book [one for general registration], namely:—Deed from _____ dated the _____ day of _____, registered as number _____; deed from _____ dated the _____ day of _____, registered as number _____; deed from _____ dated the _____ day of _____, registered as number _____, &c., referred to in the 2nd and 3rd paragraphs of the plaintiffs' statement of claim, are in so far as the said deeds refer to the lands and premises hereinbefore described null and void as against the defendants, and doth order and adjudge the same accordingly.

PARTITION OR SALE.

Form of Judgment for Partition or Sale. (Rule 956.)

[*Title, Date, &c., as in No. 822 or 902.*]

1. Upon the application of the above-named plaintiff in the presence of the solicitor for the defendant [*or, no one appearing for the defendant, although duly notified as by affidavit filed appears*] and upon hearing read the affidavits and papers filed, and what was alleged by the solicitor for [*the applicant or all parties*].

2. It is ordered and adjudged that all necessary inquiries be made, accounts taken, costs taxed, and proceedings had for

(a) Con. Rules 1897, Form 158.

886

Judgment on counter-claim declaring patent and deed of land void.

887

Judgment for partition or sale. (a)

the partition or sale of the lands and premises in the said affidavits mentioned, and for the adjustment of the rights of all parties interested therein, or for a partition of part and sale of the remainder of the said lands as may be most for the interest of the parties entitled to share therein by the Master of the Supreme Court of Judicature at

3. And it is further ordered and adjudged that the said lands, or such part thereof as the said Master shall think fit, be sold, with the approbation of the said Master, freed from the claims of such of the incumbrancers thereon (if any) whose claims were created by parties entitled to the said lands before the death of the said testator [*or, intestate*] as shall have consented to such sale, and subject to the claims of such of them as shall not have consented [*and freed also from the dower of or as the case may be*], and that the said Master do execute the conveyances on behalf of such of the infant parties as, by reason of their tender years, are unable to execute the same, and that the purchasers do pay their purchase money into Court to the credit of this action, subject to the order of this Court.

4. And it is further ordered and adjudged that, in the event of a partition of the whole of the said land, or in the event of a partition of a part and the proceeds of the sale of the remainder being insufficient to pay the costs in full, the costs, or so much thereof as remains unpaid, be borne and paid by the said parties according to their shares and interests in the said lands [*if there be any infant parties interested in the estate add* and that the proportion of the said costs payable by the infant parties respectively be, and the same is hereby declared to be, a lien on their respective shares, and that the plaintiff do pay the guardian of the infant defendant his costs of this action and that the same be added to his own costs].

(*Conclude as in No. 802, except the memorandum as to costs.*)

Con. Rules, 1888, Form 186.

REPLEVIN.

(*Formal parts: see No. 822.*)

888

Judgment for defendant in replevin action for return of goods replevied.

2. This Court doth order and adjudge that the plaintiff recover nothing against the defendants.

3. And this Court doth further order and adjudge that the defendant *J.W.*, have a return of the [*pianoforte*] and

other goods and chattels replevied by the Sheriff of the County of and mentioned in the third paragraph of the statement of claim herein to hold to him irrepleviable forever.

4. And this Court doth further order and adjudge, if the said goods and chattels are not forthwith returned to the said defendant, that the said defendant do recover against the plaintiff the sum of \$ damages, the value of his interest in said goods.

5. And this Court doth further order and adjudge that the defendants recover from the plaintiff their costs of this action to be taxed.

SPECIFIC PERFORMANCE.

(*Formal parts: see No. 822.*)

2. That the agreement dated the 23rd day of January, 1899, in the pleadings mentioned constituted a binding contract between the plaintiff and the defendant for the sale by the defendant to the plaintiff of all the land and premises in the pleadings mentioned, for the price or sum of \$1,300 payable as follows: \$100 in cash and the balance of \$1,200 to be secured by a mortgage in statutory form, dated the day of to be made by the plaintiff as mortgagor with bar of dower in favour of defendant as mortgagee, securing the said sum of \$1,200 on the property in question for a term of five years from the date thereof with interest thereon at the rate of five per cent. per annum payable half yearly on the fifth days of November and May in each and every year until the principal money is fully paid and satisfied, with adjustment of insurance, taxes, interest, water rates, &c., as of the fifth day of May, 19 ; and that the same ought to be specifically performed and carried into effect, and doth order and adjudge the same accordingly.

3. And this Court having caused an account to be taken of the amount now due and payable by the plaintiff in respect of his purchase money for the said lands after deducting therefrom the rents received by the defendants for the said premises up to and inclusive of the 1st day of November next, and the taxes on the said premises paid by the defendant, doth find that there is due from the plaintiff to the defendant upon the footing of such account the sum of \$75.68.

889

Judgment for
specific per-
formance—
account taken.

4. And this Court having caused the plaintiff's costs of this action to be taxed the same are found to amount to the sum of \$168.93, and after deducting therefrom the said sum of \$75.68 so found due to the defendant, there remains due to the plaintiff the sum of \$93.25.

5. And this Court doth further order and adjudge that the defendants do forthwith execute and deliver a proper conveyance of the said lands comprised in said agreement to the plaintiff, and that the said plaintiff do execute and deliver to the defendant a mortgage upon the said lands to secure the balance of the said purchase money being the sum of \$1,200, with interest thereon from the 5th day of November now next, in accordance with the said agreement; such deed and mortgage to be settled by [the Senior Registrar of this Court] in case the parties differ about the same.

6. And this Court doth further order and adjudge that the defendant do forthwith pay to the plaintiff the said sum of \$93.25.

(*Formal parts: see No. 822.*)

890

Judgment for specific performance—Purchase money payable in instalments—Account taken; rescission in default.

2. This Court doth declare that the plaintiff is entitled to have the agreement in the statement of claim mentioned specifically performed by the defendants, and doth order and adjudge the same accordingly.

3. And this Court having caused an account to be taken of the amount overdue and payable to the plaintiff in respect of the purchase money of the land in question under the said agreement up to the nineteenth day of November next, being the day appointed for payment thereof as hereinafter directed, doth find the same amounts to the sum of one hundred dollars.

4. And upon the said defendants or either of them paying the said sum of one hundred dollars, together with the plaintiff's costs of this action, which have been taxed at the sum of fifty-four dollars and seven cents (unless the said costs are sooner paid as hereinafter directed) to the said plaintiff on or before the nineteenth day of November next, and upon the said defendants or either of them from time to time paying to the plaintiff the residue of the said purchase money with interest as the same shall fall due and payable according to the terms of the said agreement, that is to say, the sum of two hundred dollars on the nineteenth day of April one thousand nine hundred; one hundred and ninety-two

dollars on the nineteenth day of April one thousand nine hundred and ; one hundred and eighty-four dollars on the nineteenth day of April one thousand nine hundred and ; one hundred and seventy-six dollars on the nineteenth day of April one thousand nine hundred and ; one hundred and sixty-eight dollars on the nineteenth day of April one thousand nine hundred and ; or in case the nineteenth day of April in any of such years shall fall upon a legal holiday then upon the payment due upon such day being paid on the next juridical day thereafter this Court doth order and adjudge that the plaintiff do convey and assure the said lands to the defendants or to whom they shall appoint by a good and sufficient conveyance according to the terms of the said agreement, such conveyance to be at the expense of the said defendants, and to be settled by the [Master of this Court at] in case the parties differ about the same, and deliver up on oath all deeds and writings in his power relating to the said lands to which the said defendants shall be entitled, to the said defendants or to whom they may appoint.

5. But in default of the said defendants making such payments or any of them by the time hereinbefore limited for the payment of the same this Court doth order and adjudge that the said agreement be rescinded and that the defendants do thereafter forthwith deliver up to the plaintiff possession of the said lands, or such part thereof as they may be then in possession of.

6. And this Court doth further order and adjudge that the defendants do forthwith pay to the plaintiff the sum of \$54.07 as and for his costs of this action up to and inclusive of this judgment.

(Formal parts: see No. 822.)

891

2. This Court doth declare that the agreement in the pleadings mentioned ought to be specifically performed and carried into execution, and that the defendant has accepted the title of the said lands and premises in the pleadings mentioned as shewn in *E.H.*, and in the plaintiff as entitled under contract to purchase the same from said *E.H.*, which

Judgment—
Specific performance—
Title accepted
—Part of purchase money
to be secured
by mortgage.

title is subject to incumbrances to *A.B.* and *C.D.* created by the said *E.H.*, and those claiming under him, which are to be dealt with as hereinafter mentioned and doth order and adjudge the same accordingly.

3. And an account having been taken of the amount over-due by the defendant to the plaintiff for principal money and interest from the 1st day of March, 1900, under the terms of the said contract there is due at the date of this judgment for principal money the sum of \$14,000, and for interest at six per cent. per annum, [and interest on interest in arrear at the same rate] up to the date hereinafter appointed for payment the sum of \$2,110.47, the said sums together making the sum of \$16,110.47.

4. And upon the defendant on the 29th day of May, 1902, between the hours of ten o'clock in the forenoon and three o'clock in the afternoon paying to the plaintiff or to whom he may appoint at the office of Messrs. number Street, Toronto, the said last-mentioned sum of \$16,110.47, together with his costs hereinafter mentioned unless the same shall have been sooner paid, and upon his delivering at the same time and place the mortgages for the remaining instalments of purchase money, as provided by the said agreement, with interest as the same shall fall due and payable according to the terms of the said agreement in the pleadings mentioned; this Court doth order and adjudge that the plaintiff do convey and assure or cause to be conveyed and assured the said lands and premises to the defendant or to whom he shall appoint in accordance with the said agreement, such mortgages and conveyance to be settled by the [Senior Registrar of this Court] in case the parties differ about the same, and in which all proper parties are to join as the said [Registrar] shall direct, and the plaintiff or whom he may appoint is to be entitled as mortgagee to retain the deeds and writings relating to the said lands and premises in his or their possession or power during the currency of the said mortgages.

5. And this Court doth further order and adjudge that the defendant do pay to the plaintiff his costs of this action forthwith after taxation thereof.

6. But in default of the defendant making such payment and delivering such mortgages within the time above limited the plaintiff is to be at liberty to apply to this Court for such further relief as he may be advised.

(*Formal parts: see No. 822.*)

892

This Court doth declare that the plaintiff is entitled to have the agreement for the purchase of the lands mentioned in the plaintiff's statement of claim specifically performed in case the plaintiff can make a good title to the said lands, and doth order and adjudge the same accordingly.

Judgment for specific performance—
Reference as to title.

3. And this Court doth further order and adjudge that it be referred to the [Master in Ordinary of this Court] to inquire and state whether the plaintiff can make a good title to said lands.

4. And this Court doth further order and adjudge that the defendant do pay to the plaintiff his costs of this action up to and inclusive of this judgment forthwith after taxation thereof.

5. And this Court doth reserve further directions and the question of subsequent costs until after the said Master shall have made his report.

(*Formal parts: see No. 822.*)

893

2. This Court doth declare that the contract for the sale of the lands and premises in the statement of claim mentioned by the plaintiff to the defendant ought to be specifically performed, and doth order and adjudge the same accordingly.

Judgment for specific performance—
Purchaser in possession—
Reference as to title.

3. And this Court doth further order and adjudge that it be referred to the Master of this Court at to inquire and state whether a good title can be made to the lands and premises in question in this action, having regard to the agreement for sale in the statement of claim mentioned.

4. And in case it shall appear that a good title can be made by the plaintiff, the said Master is to take an account of what is due to the plaintiff for purchase money and interest thereon according to the terms of the said agreement, and to tax to the plaintiff his costs of this action.

5. And upon the said defendant paying to the plaintiff the amount (if any) so to be found due by the said Master for purchase money, interest and costs, within one month after the said Master shall have made his report at such time and place as the said Master shall appoint; this Court doth order and adjudge that the plaintiff do execute a proper conveyance of the said lands and premises to the defendant

or to whom he may appoint (according to the terms of the said agreement) which conveyance is to be settled by the said Master in case the parties differ about the same, and deliver to the defendant upon oath all deeds and writings in his custody relating exclusively to the said lands and premises.

6. And in case the defendant shall make default in paying such amount so to be found due from him as aforesaid within the time aforesaid; this Court doth further order and adjudge that the said contract be and the same is hereby rescinded, and that the defendant do forthwith thereafter upon service hereof deliver up to the plaintiff or to whom he may appoint possession of the lands and premises in question herein, and that the said Master do inquire and state what the said defendant should pay to the plaintiff as and for occupation rent of the said premises since the defendant was let into possession thereof under the said agreement, and that the defendant do pay the same to the plaintiff together with the costs of this suit forthwith after the said Master shall have ascertained the amount so to be paid.

7. And in the event of the said Master finding that a good title cannot be made to the said lands and premises; this Court doth order and adjudge that the said Master do inquire and state what sum the defendants should pay the plaintiff as and for occupation rent of the said lands and premises from the time he was so let into possession, and that the defendant do pay the same to the plaintiff after deducting therefrom his costs of this action to be taxed forthwith after the said Master shall have made his report ascertaining the amount so to be paid, and do also within 14 days after the said Master shall have made his report upon service hereof deliver up to the plaintiff or to whom he may appoint possession of the said lands and premises: and, in such event this Court doth further order and adjudge, that upon the said defendant so delivering up possession and paying the balance, if any, found by the said Master to be due to the said plaintiff as and for occupation rent after deducting the defendant's costs of this action as aforesaid, the said action be and the same is hereby dismissed. And in case any balance shall be found due to the said defendant for his costs after setting off the amount (if any) which may be found due by the defendant to the plaintiff for occupation rent; this Court doth order and adjudge that the plaintiff do pay the same to the said defendant forthwith after the said Master shall have made his report.

SUCCESSION DUTY.

(Formal parts: see No. 822.)

894

2. This Court doth declare that the plaintiff as representing His Majesty the King is entitled to succession duty upon the moneys referred to in the pleadings and upon the interest accrued thereon up to the date of the death of *D.S.*, in the pleadings mentioned, and doth order and adjudge the same accordingly.

Judgment
declaring
succession
duty payable.

3. And an account having been taken of the amount of such succession duty this Court doth find that the same amounts to the sum of \$45,240. (a)

4. And this Court doth further order and adjudge that the defendants do pay to the plaintiff the costs of this action forthwith after taxation thereof.

TRADE MARK.

(Formal parts: see No. 822.)

895

2. This Court doth order and adjudge that the defendants, their servants, workmen, and agents, be and they are hereby perpetually restrained from stamping or impressing on boxes containing paper collars sold by or for them, and from attaching or affixing to boxes containing paper collars any labels or tickets having stamped or impressed thereon, and from selling or exposing for sale or causing to be sold or exposed for sale any boxes containing paper collars and having applied or attached thereto, the fraudulent and counterfeit mark or stamp comprised of and containing the device, emblem or representation of a comet or any other mark or stamp in imitation or counterfeit of the mark or stamp used by the plaintiff on the boxes containing the paper collars manufactured by the plaintiffs or any mark or stamp contrived or devised or calculated or intended to mislead or entrap unwary purchasers or others into purchasing the paper collars contained in boxes bearing such imitation or counterfeit marks or stamps as or for paper collars of the genuine manufacture of the plaintiff.

Judgment re-
straining in-
fringement of
trade mark.

(a) If granted, an order for payment of the amount may be inserted here.

3. This Court doth further order and adjudge that the defendants do forthwith pay to the plaintiff the sum of dollars, being the profits realized by the said defendants from the sale of the paper collars sold by them and contained in boxes having the said counterfeit mark or stamp attached thereto.

4. This Court doth further order and adjudge that the said defendants do forthwith destroy all the labels now in their possession or under their control which are counterfeits of the plaintiffs' said trade mark.

5. And this Court doth further order and adjudge that the defendants do within one week after the service of this judgment on them or their solicitor, or his agents, make and file a full and sufficient affidavit specifying what and how many of the labels which are counterfeits of the plaintiffs' said trade mark were in the possession or under the control of the defendants on the 16th day of April, 19 , and where the same are at the time such affidavit is sworn and if the said counterfeit labels or any of them have been destroyed the time, place, and mode of such destruction.

6. And this Court doth further order and adjudge that the defendants do pay to the plaintiff his costs of this action forthwith, after taxation thereof.

WILLS.

(*Formal parts: see No. 822.*)

896

Judgment—
Establishing
will—Order-
ing probate to
issue.

2. This Court doth declare that the will of the testator in the pleadings named, dated the day of is well proved, and that the same ought to be established, and the trusts thereof performed and carried into execution [except so far as they are void under The Mortmain and Charitable Uses Act, 1902, as hereinafter declared] and doth order and adjudge the same accordingly.

3. [And this Court doth further declare that the charitable gifts in said will bequeathed, are null and void as being contrary to the said Mortmain and Charitable Uses Act, 1902, except the devise in favour of which is hereby declared to be a good and valid devise (*as the case may be*), and doth order and adjudge the same accordingly.]

4. And this Court doth further order and adjudge that the proper Court in that behalf do grant probate of the said will to the executors named therein.

5. And this Court doth further order and adjudge that all parties are entitled to be paid their costs of this action, those of the defendants the (*executors*) as between solicitor and client, out of that part of the said testator's estate undisposed of by his said will, having regard to the declaration aforesaid, and that such undisposed of estate ought to be applied in payment of the said costs as follows, viz., namely, first, in payment of the said costs of the said (*executors*); secondly, in payment of the costs of the other defendants, thirdly, in payment (so far as the same will extend) of the costs of the plaintiff.

(*Formal parts: see No. 822.*)

1. This Court doth declare that the paper writing dated the 3rd day of June, 1900, in the pleadings set forth and purporting to be the last will and testament of *J.B.* is the last will and testament of the said *J.B.*, deceased, and doth order and adjudge the same accordingly.

898

Judgment establishing will and declaring certain alterations in it inoperative.

2. And this Court doth further declare that the interlineations, erasures, and cancellations appearing to have been made in the said last will and testament subsequent to the execution and publication thereof by the testator are inoperative, and that the said will ought to be read and construed as though such last mentioned interlineations, erasures and cancellations had never been made in the said will, and doth order and adjudge the same accordingly.

3. And this Court doth further declare that the said defendant *E.B.*, the widow of the said *J.B.*, is not under the said will put to her election between the provisions made for her benefit in the said will and her rights as dowress, and as widow of the said testator, and doth order and adjudge the same accordingly.

Dowress not bound to elect.

4. And this Court doth further declare that the devise of the premises on the east side of Jarvis Street in the City of Toronto in the said will contained to the trustees of Knox College is a valid devise to the defendants Knox College, and doth order and adjudge the same accordingly.

5. And this Court doth further declare that the devise of the premises on the west side of Jarvis Street in the City of Toronto, to the said *E.B.* for life, and from and after her decease to the trustees of Knox College, was revoked by the sale of the said devised premises by the testator in his lifetime, and doth order and adjudge the same accordingly.

6. And this Court doth further order and adjudge that it be referred to [the Master of this Court] to take and make all such accounts, proceedings, and inquiries, as he may find to be necessary for the purpose of winding up and distributing the estate of the said testator according to the practice of this Court, and the executors and executrix are to pay into Court to the credit of this action as the said Master shall direct any balance which may be found in their hands.

7. And this Court doth further order and adjudge that such parts of the said estate as the said Master shall direct shall be sold with the approbation of the said Master—and the purchasers are to pay their purchase money into Court to the credit of this action, and all proper parties are to join in the conveyances to the purchasers, as the said Master shall direct.

8. And this Court doth further order and adjudge that the said Master do inquire and state whether it would be for the interests of the parties that the whole or any part of the real estate of the testator in which the said *E.B.* is entitled to dower, and which may be sold under this judgment, should be sold free from or subject to such dower, and the lands are to be sold free from or subject to such dower accordingly, and the said Master is to fix a sum in gross to be paid to the said *E.B.*, in lieu of dower in such of the said lands of which she is dowable, which shall be sold free from her said dower.

9. And this Court doth further order and adjudge that the said Master do tax to all parties their costs of this action, those of the executors and executrix as between solicitor and client, and that such costs be borne by the personal estate if sufficient, but if the personal estate be insufficient for the payment of the whole or any part thereof then the same or such part thereof as the personal estate shall be insufficient to pay are to be borne by the real estate.

10. And this Court doth further order and adjudge that the proceeds of the said estate when paid into Court be paid out as the said Master shall direct.

(*Formal parts: see No. 822.*)

899

2. This Court doth declare that under the devise to the plaintiff of the north $\frac{1}{2}$ of lot number 34, in the 4th concession of the Township of Scarboro', contained in the will of William Mason, deceased, in the pleadings mentioned, the north $\frac{1}{2}$ of lot number 33 in the 4th concession of the said Township of Scarboro' passed to the said plaintiff for all the estate which the said testator had therein at the time of his decease charged with the payment of the sum of \$2,000, and interest thereon since the 19th day of October last past, which sum is payable to the infant defendants, children of the testator's daughter *Mary Ann* in equal shares, the share of each of the said infant defendants being payable upon his attaining the age of 21 years, and doth order and adjudge the same accordingly.

Judgment—
declaring that
notwithstand-
ing mis-
description
land passed by
will.

3. And this Court doth further order and adjudge that until the said infant defendants attain the age of 21 years interest at the rate of 5 per cent. per annum on their respective shares in the said fund be paid half-yearly into Court to the credit of this action.

4. And this Court doth further order and adjudge that upon the said infant defendants respectively attaining their majority the moneys to which they are respectively entitled be paid out to them with such interest as may have accrued thereon.

5. This Court doth further order and adjudge that the said plaintiff do pay to the Official Guardian *ad litem* his costs of this action forthwith after taxation thereof.

SATISFACTION PIECE—RETURNS OF JUDGMENTS.

Form of Satisfaction Piece. (Rule 643.)

(*Title.*)

900

Satisfaction is acknowledged of the judgment against Satisfaction
defendant in an action for \$ and costs. And piece. (a)
do hereby expressly nominate and appoint solicitor
to witness and attest execution of this acknowledgment
of satisfaction.

Judgment entered on the day of

Signed by the said in the presence of
me of one of the solicitors of the
Supreme Court of Judicature for Ontario.
And I hereby declare myself to be solicitor
for and on behalf of said expressly
named by and attending at request
to inform of the nature and effect
of this acknowledgment of satisfaction
(which I accordingly did before the same
was signed by me) and I also declare that
I subscribe my name hereto as such soli-
citor.

(Signature)
the above-named
plaintiff.

(Signature.)

Con. Rules 1888, Form 214.

Form of return of Judgments. (Rule 36).

901

Return of
judgments. (a)

List of judgments entered in the office of the Deputy
Clerk of the Crown [*or, Deputy Registrar, or Local Regis-
trar, as the case may be*] of the County of during
the three months ending the day of 19 .

- (1) Plaintiff Defendant (*names in full*).
- (2) Date of entry of judgment.
- (3) Against whom the judgment is signed.
- (4) The amount recovered, or other relief given, exclu-
sive of costs.
- (5) The amount of costs taxed.

Con. Rules, 1888, Form 215.

(a) Con. Rules, 1897, Form 211.

CHAPTER XIII.

ORDERS.

Order in Chambers, General Form.

In the High Court of Justice.

Name of the Judge or officer thus:

Hon. the Chief Justice of the
Common Pleas,
or Hon. Mr. Justice,
In Chambers,
or The Master in Chambers,
(as the case may be.)

Tuesday, the day
of A.D.

Between A.B., Plaintiff,
and
C.D., Defendant.

1. Upon the application of and upon reading
the affidavit of filed and upon hearing the
solicitor [or, counsel] for [where any recital is necessary,
and it appearing that, &c.].

2. It is ordered that

3. And it is further ordered that the costs of this appli-
cation be

See Con. Rules, 1888, Form 120.

Order to try Action in County Court. (Rule 561.)

In the High Court of Justice.

(Name of Judge.)

In Chambers.

(Date.)

Between Plaintiff,
and
Defendant.

1. Upon the application of , and upon reading the
affidavit of filed, and upon hearing the solicitor [or,
counsel] for

902

Order in
chambers
(general
form). (b)

903

Order to try
action in
county court.
(c)

(b) Con. Rules, 1897, Form 104.

(c) Con. Rules, 1897, Form 121.

2. It is ordered that this action be tried before the County Court of

3. And it is further ordered that the costs of this application be

See Con. Rules, 1888, Form 145.

904

Order of
reference
under R.S.O.
c. 62, s. 28. (a)

Order of Reference under Sec. 28 of The Arbitration Act.

In the High Court of Justice.

(Name of Judge.)

In Chambers.

(Date.)

Between Plaintiff,
and
Defendant.

1. Upon the application of , and upon reading the affidavit of filed, and upon hearing the solicitor [or, counsel] for

2. It is ordered that the following questions arising in this action namely, be referred for inquiry and report to under section 28 of The Arbitration Act.

3. And it is further ordered that the costs of this application be

See Con. Rules, 1888, Form 139.

905

Order of
reference
under R.S.O.
c. 62, s. 29. (b)

Order of Reference under Sec. 29 of The Arbitration Act.

In the High Court of Justice.

(Name of Judge.)

In Chambers.

(Date.)

Between Plaintiff,
and
Defendant.

1. Upon the application of , and upon reading the affidavit of filed, and upon hearing the solicitor [or, counsel] for

(a) Con. Rules, 1897, Form 122.

(b) Con. Rules, 1897, Form 123.

2. It is ordered that the (*state whether all or some and, if so, which of the questions are to be tried*) in this action be tried by

3. (*To be used in a case where it is not necessary to reserve any questions as to costs or otherwise.*) And it is further ordered that the defendant [*or, the party by whom any amount shall be found by the Referee to be due*] do pay to the plaintiff [*or, the party to whom such amount shall be found due*] the amount which the Referee shall find to be payable, forthwith after the confirmation of the Referee's report (*or as the case may require*).

4. And it is further ordered that the costs of this application [*or, of this action*] be (*as may be ordered*).

See Con. Rules, 1888, Form 140.

Order dismissing Motion (Generally).

In the High Court of Justice.

(*Name of Judge or Officer.*)

In Chambers.

(*Date.*)

Between

Plaintiff,
and
Defendant.

906

Order dismissing motion (general form). (c)

1. Upon the application of for an order [*state shortly the object, e.g., to dismiss this action for want of prosecution*] and upon reading the affidavit of filed, and upon hearing the solicitor [*or, counsel*] for

2. It is ordered that the said application be and the same is hereby dismissed (*if the dismissal is with costs add*), with costs to be paid by the to the forthwith after taxation thereof.

Con. Rules, 1888, Form 159.

*Order to Discharge or Vary Order.***907**

Order to discharge or vary order. (a)

In the High Court of Justice.

The Master in Chambers (*or as may be*)

(Date.)

Between

Plaintiff,
and
Defendant.

1. Upon the application of _____, and upon reading the affidavit of _____ of _____ filed, and upon hearing the solicitor [or, counsel] for _____.

2. It is ordered that the order of _____ in this action dated the _____ day of _____ 19____, be discharged [*or, varied by* _____].

3. And it is further ordered that the costs of this application be _____

See Con. Rules, 1888, Form 134.

*Court Order, General Form.***908**Court order
(general form).
(b)

In the High Court of Justice.

Hon. the Chief Justice } the _____ day of _____ A.D.
of the King's Bench, }
(*or as the case may* }
be). }

Between A.B., &c., Plaintiffs,
and
C.D., &c., Defendants.

1. Upon motion made this day unto this Court on behalf of the _____ and upon hearing read _____ and upon hearing counsel for _____ [*where necessary add no one appearing for though duly served with notice as by affidavit of appears*].

2. This Court doth order

3. And this Court doth further order

(Signature of Officer.)

(a) Con. Rules, 1897, Form 116.

(b) Con. Rules, 1897, Form 103.

(*Style of cause as in No. 908.*)

Upon the petition of [*A.B., or, the plaintiffs, or as may be*] presented unto this Court [*this day, or as may be*] by Mr. Y.Z., of counsel for the said petitioner, &c. (*Proceed as in Form 908.*)

909

Formal parts
of order made
in Court on
petition.

Order of a Divisional Court.

In the High Court of Justice.

Hon. the Chancellor,) the day of A.D. 19
Hon. Mr. Justice ,)
Hon. Mr. Justice ,)

910

Order of a
Divisional
Court (general
form (c))

Between *A.B., &c.*, Plaintiffs,
and
C.D., &c., Defendants. (*a*)

1. Upon motion made unto this Court this day [*or, on the day of*] on behalf of the defendant by way of appeal from the judgment of the Hon. Mr. Justice made on the day of 19 , (*c*)

herein, in presence of counsel for [*all parties, or as may be, see Form 908*] and upon hearing read the pleadings, the evidence adduced at the trial, and the judgment (*d*) aforesaid, and upon hearing what was alleged by counsel aforesaid [*where so add*] and judgment upon the motion having been reserved until this day].

2. The Court doth order that the said judgment (*e*) be varied, and that the judgment of the Court as varied be as follows :

“(1) This Court doth order and adjudge that the plaintiffs do recover from the defendants the sum of \$ and his costs of this action, including the costs of this appeal, payable forthwith after taxation thereof.

“(2) And this Court doth further order and adjudge, &c.”

(*a*) In all orders except decretal orders and vesting orders the shortened style of cause shall be sufficient, *e.g.*,

Between *John Jones*, Plaintiff,
and
Aaron Smith and others, Defendants.

(*c*) Con. Rules, 1897, Form 102.

(*d*) The original form has here “[*or direction*].” See note (*e*).

(*e*) The form in the Appendix to the Con. Rules 1897, has here “[*or the direction of the Hon. Mr. Justice, etc., to enter judgment*]” which is not now in accordance with the practice: see Rule 791.

911

Divisional
Court order
where judge
has died after
hearing and
before judg-
ment. (a)

In the High Court of Justice.

Hon. The Chancellor

Hon. Mr. Justice

(*Formal parts: see No. 910.*)

Upon motion made unto this Court constituted as above mentioned along with the Honourable Mr. Justice since deceased, &c.

(*Formal parts: see No. 910.*)

912

Divisional
Court order
affirming
judgment at
the trial.

1. Upon motion made this day unto this Court by counsel on behalf of the plaintiffs in the presence of counsel for the defendant by way of appeal from the judgment pronounced by the Honourable Mr. Justice at the trial of this action on the day of 19 , dismissing this action with costs, upon hearing read the pleadings and proceedings in the action, the evidence adduced at the trial, and the said judgment, and upon hearing counsel aforesaid.

2. This Court doth order that this appeal be and the same is hereby dismissed with costs to be paid by the plaintiff to the defendant forthwith, after taxation thereof.

3. And upon motion also made unto this Court this day by counsel for the plaintiffs in presence of counsel for the defendant by way of appeal from the order pronounced by the Honourable Mr. Justice on the day of , and upon hearing read the affidavits and papers filed on the motion for the said order, and upon hearing counsel aforesaid.

4. This Court doth order that the said last mentioned appeal be and the same is hereby allowed, and that the said order of the day of be and the same is hereby vacated.

5. And this Court doth further order that the defendant do pay to the plaintiffs their costs of the motion before the Honourable Mr. Justice , whereon the said order of the day of was made together with their costs of this appeal from the said order forthwith after taxation thereof.

(a) See *Ince v. City of Toronto*, judgment of Supreme Court, 13 May, 1901.

(Formal parts: see No. 910.)

913

2. This Court doth order that the judgment pronounced by the Honourable Mr. Justice on the day of 19 , dismissing this action with costs, be and the same is hereby set aside.

Order setting aside judgment at trial and awarding judgment for appellant.

3. And this Court doth order and adjudge that the plaintiffs do recover against the defendant the sum of together with the costs of this motion and the costs of the action to be taxed [if so less the costs of any issues of fact as to which the plaintiff has failed, and less also the extra costs occasioned to the defendant by such issues to be taxed].

(Formal parts: see No. 910.)

914

2. This Court doth order, that the said judgment be varied, and that the judgment of the Court as varied be as follows:

Order varying judgment.

“ (1) This Court doth order and adjudge, that &c.,

“ (2) And this Court doth further order and adjudge that, &c.”

3. And this Court doth not see fit to make any order as to the costs of this appeal.

(Formal parts: see No. 910.)

915

2. This Court doth order that the said judgment be and the same is hereby vacated and set aside.

Order for new trial, costs to appellant in any event.

3. And this Court doth further order that a new trial be had between the parties to this action.

4. And this Court doth further order that the costs of the said former trial and of this motion to be taxed on the final taxation of costs herein be paid by the plaintiff to the defendant in any event of this action.

(Formal parts: see No. 910.)

916

1. This Court doth order that the said judgment be and the same is hereby set aside, and that a new trial be had between the parties herein.

Order for a new trial on payment of costs.

In the High Court of Justice.

The Hon. the Chancellor.

The Hon. Mr. Justice

The Hon. Mr. Justice

} Friday, the day of 19 .

918

Order on
County Court
appeal.

In the matter of an action pending in the County Court of the County of Carleton.

Between *M.C.*, Plaintiff (Respondent),
and

This is the County Court *D.M.*, Defendant (Appellant).

1. Upon motion made unto this Court on the day of , 19 , by counsel for the defendant, by way of appeal from the judgment pronounced by His Honour , Judge of the County Court of the County of , on the day of 19 , herein, in presence of counsel for the respondent, and upon hearing read the pleadings, the evidence adduced at the trial, and the judgment aforesaid, certified to this Court, and upon hearing what was alleged by counsel aforesaid [and judgment upon the motion having been reserved until this day].

2. This Court doth order that the said appeal be and the same is hereby allowed, and that the judgment of the day of , 19 , pronounced by the Judge of the County Court of the County of Carleton be and the same is hereby set aside.

3. And this Court doth further order that judgment be entered in the said County Court declaring that the line run by *E.R.* between the lands of the plaintiff and defendant is the true and correct line, and with such declaration dismissing the action of the plaintiff [without costs.]

[Or, that judgment be entered in the said County Court as follows: (*setting it out*)].

4. And this Court doth not think fit to make any order as to the costs of this appeal (*or as may be*).

(*Formal parts: see No. 918.*)

2. This Court doth order and adjudge that the said appeal of the defendants be and the same is hereby allowed with costs to be paid by the plaintiff to the defendants forthwith after taxation thereof.

919

Another form giving judgment in favour of defendant on a counter-claim.

3. And this Court doth further order that the said judgment be set aside and that judgment be entered in the said County Court dismissing the plaintiff's action with costs, to be paid by the plaintiff to the defendants forthwith after taxation thereof.

4. And this Court doth further order that judgment be entered in the said action for the defendants upon their counterclaim against the plaintiff for the sum of \$110.16, with interest thereon from the 15th day of August, 1898, together with their costs of such counterclaim to be taxed as if the same had been pleaded by way of set off to the plaintiff's claim.

5. And this Court doth further order that this order and the judgment hereby directed to be entered are not to prejudice any rights the plaintiff may have against the defendants in respect of any moneys received by the defendants since the bringing of this action on account of any of the promissory notes mentioned in the pleadings.

(*Formal parts: see No. 918.*)

920

Order on appeal from County Court for a new trial on payment of costs.

2. This Court doth order that the said appeal be and the same is hereby allowed, and that the said verdict and judgment be and the same are hereby set aside.

3. And this Court doth further order that the plaintiff do pay to the defendant his costs of this appeal forthwith after taxation thereof.

4. And this Court doth further order that the plaintiff upon payment of the taxed costs of the former trial within [two weeks] from the date of taxation thereof, be at liberty to proceed to a new trial of this action, and that in default of payment of the said costs judgment be entered in the said County Court dismissing this action with costs to be paid by the plaintiff to the defendant forthwith after taxation thereof.

5. *If so* and in the event of the plaintiff proceeding to a new trial of this action, this Court doth order, that he be at liberty to amend his statement of claim as he may be advised, and that the defendant be at liberty thereupon to amend his statement of defence as he may be advised.

(*Formal parts: see No. 910.*)

2. This Court doth order that the parties do proceed to the trial of an issue in this action, and the question to be tried shall be:

921

Order of
Divisional
Court directing trial of an issue.

“Was the debt owing upon the mortgage made by *E.A.* to *T. Company*, dated the day of upon which the plaintiffs sue in this action paid off or satisfied by means other than payment of money, and the lands released therefrom at the time of the discharge by the plaintiffs on the twenty-seventh day of April, 1891, of the mortgage in the plaintiffs’ reply mentioned, dated the 31st day of December, 1881?”

3. And this Court doth further order that such issue be prepared and delivered by the plaintiffs within fourteen days from the entry of this order, and be returned by the defendant within four days thereafter and be tried at [the City of Toronto].

4. And this Court doth further order that this motion do stand over to be brought on after the trial of the said issue, and the question of costs and all further questions are reserved to be disposed of on the hearing of the said motion after the trial of the said issue.

5. And this Court doth further order that either party desiring to appeal from the judgment on the trial of the said issue shall bring on such appeal for argument with the said motion.

In the High Court of Justice.

Hon. the Chief Justice of the
King’s Bench.
Hon. Mr. Justice
Hon. Mr. Justice

Wednesday the 2nd day of
January, A.D. 19

922

Order on
appeal from a
Division
Court.

In the matter of an action pending in the first Division Court of the County of

Between *W.L.*, (Primary Creditor) Plaintiff,
and
G.C., (Primary Debtor) Defendant.
and

C.D., Garnishee.

1. Upon motion made unto this Court on the day of A.D. 19 , on behalf of the plaintiff, primary creditor, by way of appeal from the order made by his Honour Junior Judge of the County of on the day of

19 , setting aside the judgment pronounced against the defendant primary debtor in the First Division Court of the County of , and transferring this action to the Second Division Court of the County of , and from the order pronounced by His Honour Judge on the day of 19 , dismissing the application of the plaintiff, primary creditor, for a new trial of this action, in presence of counsel for the plaintiff, primary creditor, and defendant, primary debtor, no one appearing for the garnishee although duly notified and upon hearing read the proceedings in this action the evidence adduced before His Honour Judge, , and the orders aforesaid, certified to this Court, and an affidavit of service of the application to set aside the judgment filed on this appeal, and upon hearing what was alleged by counsel aforesaid, and judgment upon the motion having been reserved until this day.

2. This Court doth order that the appeal of the plaintiff, primary creditor, be and the same is hereby allowed and that the said orders of his Honour Judge dated the day of , 19 , and the day of 19 , respectively be and the same are hereby set aside, and vacated.

3. And this Court doth further order that the judgment pronounced against the defendant, primary debtor, in the First Division Court of the County of and dated the day of , 19 , be and the same is hereby restored.

4. And this Court doth order that the defendant, primary debtor, do pay the plaintiff, primary creditor, the costs of the appeal to this Court to be taxed and certified to the said First Division Court of the City of Wentworth, pursuant to the statute in that behalf.

923

Order on
appeal from
Division
Court grant-
ing a new
trial on pay-
ment of costs.

(*Formal parts: see No. 922.*)

2. This Court doth order that the said judgment be vacated.

3. And this Court doth further order that upon the defendant's paying the costs of the last trial and of this appeal within ten days after taxation thereof, a new trial of this action be had between the parties.

3. But in default of the defendant's paying the costs within the time appointed, this Court doth order that the said appeal be allowed and that judgment be entered for the plain-

tiff against the defendant for the sum of \$94.15, with interest from the day of A.D. 19 , (being the amount remaining due to the plaintiff after deducting \$12 received by him for the said defendant) and his costs of this action, including the costs of this appeal to be taxed.

(Title, &c., see No. 910.)

924

1. Upon motion made unto this Court on Monday, the day of , 19 , by Mr. of counsel for the defendant, in presence of counsel for the plaintiff, by way of appeal from the order of the Honourable Mr. Justice made on the 20th day of , 19 , whereby the order of the Master in Chambers herein of the day of , 19 , [in so far as the same directed the delivery of particulars] was set aside, and upon hearing read the statement of claim herein, the notice of motion [for particulars], the affidavit of filed [and his cross-examination thereon], the order of the Master in Chambers and the order of the Honourable Mr. Justice , and upon hearing what was alleged by counsel aforesaid, and judgment having been reserved until this day:

2. This Court doth order that the said appeal be and the same is hereby allowed, and the said order of the Honourable Mr. Justice be and the same is hereby set aside.

3. This Court doth further order that paragraph two of the said order of the Master in Chambers be varied and as varied be as follows:

“(2) It is ordered that, &c.”

[4. And this Court doth further order that in other respects the order of the Master in Chambers be restored.]

5. And this Court doth further order that the costs of the appeal to the Honourable Mr. Justice and of this appeal be costs in the cause.

(Formal parts: see No. 922.)

925

Upon motion made unto this Court on the day of 19 , by Mr. of counsel for the plaintiff in presence of counsel for the defendant, upon hearing read the notice

of motion, the affidavits and papers filed, and on hearing what was alleged by counsel aforesaid and judgment having been reserved until this day.

1. This Court doth order that the appeal of the defendant from [the orders and judgment of the Judge of the District Court of the District of *or as the case may be*] be and the same is hereby struck out.

[2. *If so*, And this Court doth not see fit to make any order as to costs.]

(*Formal parts: see No. 910.*)

926

Order to quash
appeal.

2. This Court doth order that this appeal be and the same is hereby quashed with costs [*if so* as of a motion to quash] to be paid by the plaintiff to the defendant forthwith after taxation thereof.

CHAPTER XIV.

MASTER'S OFFICE.

SECTION I.—ADDING PARTIES.

(Shortened style as in No. 25.)

Whereas in proceeding under the judgment in this cause bearing date the day of , 19 , it appears that *A.B.* would but for Rule 203 of the Consolidated Rules of the Supreme Court of Judicature for Ontario be a necessary party to this action, and ought to be served with the judgment herein, pursuant to said Rule 203.

928
Master's
order for serv-
ing judgment
on person in-
terested under
Rules 203 or
659.

It is therefore ordered that the said *A.B.* be served with an office copy of the said judgment indorsed with the notice referred to in the said Rule, and also with a copy of this order.

Dated, &c.

C.D.,
Master at

*Indorsement on Office Copy of Judgment or Order, served
under Rules 203-219.*

To , (the person upon whom service is to be made.)

929
Indorsement
on office copy
of judgment
or order
served. (a)

Take notice, First, that from the time of service of this notice you [*naming the party, or (where the notice is directed to be served on some person for an infant or person of unsound mind) X.Y., (naming the infant or person of unsound mind) an infant or a person of unsound mind*] will be bound by the proceedings in this cause in the same manner as if you [*or, the said infant or person of unsound mind*] had been originally made a party, unless you [*or, the said infant or person of unsound mind*] within fourteen days after the service hereof apply to the Court to add to, vary or set aside the within judgment [*or, order*]. And Secondly, that you [*or, the said infant or person of unsound mind*] may

upon service of notice upon the plaintiff attend the proceedings under the within judgment [*or, order*].

A.B., of the of the ,
in the County of ,
Plaintiff's Solicitor.

Con. Rules, 1888, Form 33.

930

Order adding
a party under
Rule 659.

(*Formal parts: see No. 928.*)

Whereas, in proceeding under the judgment [*or, order*] in this cause, bearing date, &c., it appears that A.B. ought to be made a party to this action, and be enabled to attend the proceedings before me.

It is therefore ordered that he be made a party defendant to this cause; for that purpose it is ordered that he be served with an office copy of the said judgment [*or, order*] indorsed with the notice set forth in Form 74 referred to in Rule 660 of the Consolidated Rules of the Supreme Court of Judicature; and also with a copy of this order.

Dated, &c.

*Signature of Judge or Officer
making order.*

Indorsement on the Copy Served of an Order adding a Party.
(Rule 660.)

931

Indorsement
on the copy
served of an
order adding a
party. (a)

To A.B., (*the person upon whom service has been directed*).

If you wish to apply to discharge the within order or to add to, vary, or set aside, the judgment in this cause, you must do so within fourteen days from the service hereof. (*When the order fixes a time for the further proceedings, add*). And if you fail to move to discharge the said order or to add to, vary, or set aside the judgment, and fail to attend at the time and place appointed by said order, either in person or by your solicitor, such order will be made and proceedings taken, in your absence, as may seem just and expedient; and without any further notice you will be bound by the judgment, and the further proceedings in the cause,

in the same manner as if you had been originally made a party.

A.B.,
Plaintiff's Solicitor.

Con. Rules, 1888, Form 33.

(Formal parts: see No. 902.)

It is ordered:

1. That service of an office copy of the judgment [*or*, order] dated the , 19 , together with a copy of this order upon A.B., of, &c., be deemed good service upon C.D., E.F. and G.H., and the said defendants are to have days from the day of such service within which to move, to add to, vary, or set aside the said judgment.

932

Special order as to mode of service or dispensing with service.

Or, that publication of the said judgment [*or*, order] and of the indorsement prescribed by the Consolidated Rules in this behalf, addressed to L.M., and of a copy of this order, in the newspaper called the , published at , be deemed good service of such judgment [*or* order] on the said L.M.; and the defendant L.M. is to have, &c. (*continue as in par. 1*).

Or, that service of an office copy of the said judgment [*or*, order] upon S.T., by sending such an office copy, indorsed with the memorandum prescribed by Consolidated Rules in that behalf through the post office, in a prepaid letter, addressed to him at , may be deemed good service of such judgment [*or* order] on the said S.T.; and the defendant S.T. is to have (*continue as in par. 1*).

Or, that service of the said judgment [*or* order] on W.Y. be dispensed with. (*b*)

To S.T., of
Sir,

(Place and date.)

933

Letter enclosing office copy of judgment to a person directed to be served through the post office.

In a suit of A. v. B., now pending in the High Court of Justice for Ontario, for the administration of the estate of W.A., late of, &c., deceased (*or as may be*), it has, by an

(*b*) The Master has power to dispense with the service of the judgment on parties necessary to be served under Rule 203. But he has no such power as to parties necessary to be served under Rule 659.

order dated the 19 , been directed that an office copy of the judgment [*or, order*] therein, dated the day of 19 , be transmitted to you, as being one of the next of kin of the said *W.A. (or as may be)*. I beg, therefore, as the plaintiff's solicitor, to enclose you such office copy (marked A.), and also a copy of the said order, dated the , 19 , (*order directing service*); and have to call your attention to the memorandum indorsed on the office copy (marked A.).

As I shall have occasion to satisfy the Court that the office copy of the judgment [*or, order*] and copy order have reached you, I shall feel obliged by your signing and returning to me, through the post office, the acknowledgment to that effect which you will find written in the fold of the paper enclosed (marked B.) (*a*).

I am, &c.,
T.Y.

934

Acknowledgment of the receipt of the notice. (*a*)

(*Place and date.*)

I, *S.T.*, of, &c., hereby acknowledge to have received, through the post office on the , 19 , an office copy of the [judgment] in a cause of *A. v. B.*, with an indorsement thereon, in the form or to the effect of the within written [judgment] and of the indorsement thereon, and also a document purporting to be a copy of an order made on the of , 19 , in the within mentioned suit, directing such office copy or judgment to be transmitted to me.

S.T.

935

Affidavit of such service.

(*Formal parts: see No. 744.*)

1. I have, in the manner hereinafter mentioned, served *S.T.*, in the order made in this cause dated the of , 19 (*order directing special mode of service*), named, with the judgment [*or, order*] made in this action, dated the of , 19 .

2. On the of , 19 , I put into the post office, in the City of , in the County of , a letter duly addressed thus: (*set out the address*); and with the proper postage stamp affixed thereto, as a prepaid letter; and of which letter the paper writing marked A. now produced and shewn to me is a true copy.

(*a*) It seems to be advisable, in every case, to send a form of acknowledgment for signature.

3. The said letter, at the time I posted the same as aforesaid, contained a true copy, as passed and entered, of the order in this action dated the of , 19 , now produced and shewn to me, and marked B (*order directing special service*), and also an office copy of the said judgment [*or, order*] dated the of , 19 , with a memorandum indorsed thereon addressed to the said *S.T.*, and which two documents were true copies respectively of the judgment [*or, order*] marked C., and memorandum indorsed thereon marked D., now produced and shewn to me.

4. The said letter, when posted as aforesaid, also contained the said exhibited documents marked respectively C. and D., and likewise the acknowledgment, marked E., now appearing in the fold of the said exhibit C., except that such acknowledgment was then undated and unsigned.

5. The said exhibited documents, marked C., D., and E., were received by me on the of , 19 , through the post office.

6. Under the circumstances hereinbefore stated, I verily believe that the office copy of the said judgment [*or order*], with such indorsement thereon as aforesaid, and a copy of the said order of the of , 19 , (*order directing service*), were duly received by the said *S.T.*, at , aforesaid, on or about the of , 19 . (b)

SECTION II.—ADMINISTRATION, AND TAKING OF ACCOUNTS OF ACCOUNTING PARTIES.

Advertisement for Creditors. (Rule 701.)

Pursuant to a judgment [*or, an order*] of the High Court of Justice, made in [the matter of the estate of A.B., and in] a cause *S.* against *P.* (*short title*) the creditors of A.B., late of , in the County of , who died in or about the month of , 19 , are, on or before the day of , 19 , to send by post, prepaid to E.F., of , the solicitor for the defendant C.D., the executor [*or, administrator*] of the deceased (*or*

936

Advertisement for creditors. (c)

(b) The form assumes that the acknowledgment will be written on the original judgment and indorsement. Where it is not so intended, the acknowledgment should be varied in form accordingly, and made sufficiently explicit.

(c) Con. Rules, 1897, Form 79.

as may be directed) their Christian names and surnames, addresses and descriptions, the full particulars of their claims, a statement of their securities, and the nature of the securities (if any) held by them; or in default thereof, they will be peremptorily excluded from the benefit of the said judgment [*or, order*]. Every creditor holding any security is to produce the same before me, at my Chambers, at on the day of , 19 , at o'clock in the noon, being the time appointed for adjudication on the claims.

Dated this day of , 19 .

G.B., Master.

Con. Rules, 1888, Form 36.

(Short title of matter or cause, as in the advertisement.)

987

Notice of particulars of claims under Rule 701.

Sir:

I, the undersigned (*set out, in full, the Christian names and surname, address and description of the claimant*), beg to inform you that I claim to be a creditor upon the estate of A.B., late of, &c., *as in the advertisement*), for the sum of \$ [*set out or refer to an enclosure, containing the full particulars of the claim; as thus: being money lent by me to the said A.B., on the day of , 19 , or, for goods sold and delivered by me to the said A.B., the full particulars whereof are comprised in the paper writing marked L., sent herewith*]; and that the only security I hold for the debt so due to me, or any part thereof, is [*state the nature of the securities, if any; as thus: an I. O. U. of the said A.B. for the said \$, dated , 19 , [or, and that I do not hold any security whatsoever for the debt so due to me, or any part thereof]*].

Dated, &c.

(Signature of creditor.)

To (*Name and address of the person to whom, by the advertisement, the notice is directed to be sent*). }

(*Formal parts: see No. 744.*)

I, *E.F.*, of (*place of business*), gentleman, the solicitor in this cause [*or matter*] for the above-named plaintiff [*or*, defendant *C.D.*—*or as may be*], the executor [*or*, administrator] of *A.B.*, late of (*residence and addition: as in the advertisement*), deceased, make oath and say, as follows:

938

Affidavit of non-receipt of any claim under the advertisement.

1. No claim, or particulars of any claim, has or have been sent in to me [*if so, add: or to my firm of F. & G., of aforesaid—as in the advertisement*] by any person or persons claiming to be a creditor or creditors of the said *A.B.*, deceased, pursuant to the advertisement issued in that behalf in this cause [*or, matter*], dated the _____ day of _____, 19____, and which was published in the _____ of the _____ day of _____, 19____.

(*Formal parts: see No. 744.*)

1. *A.B.*, the testator [*or, intestate*] in the judgment [*or, order*] dated the _____ day of _____, 19____, in this cause [*or, matter*], was at the time of his death, and his estate still is, justly and truly indebted to me in the sum of \$_____, for principal money, and for interest thereon at the rate of _____ per cent. per annum, from the _____ day of _____, 19____, upon and by virtue of a judgment recovered by me against the said *A.B.* in the High Court of Justice (*or as may be*), and duly signed on the _____ day of _____, 19____, for the sums of \$2,000 debt, and \$25.18 costs.

939

Affidavit to prove a debt due on a judgment.

2. The said judgment now remains in full force and virtue.

3. And I, speaking positively for myself, and to the best of my knowledge and belief as to other persons, lastly say, that I have not, nor hath nor have any other person or persons by my order, or for my use, received the said sum of \$_____, and interest, or any part thereof respectively, nor any security or satisfaction whatsoever therefor, save and except the said judgment (*or as may be*).

(*Formal parts: see No. 744.*)

1. By an indenture dated the _____ day of _____, 19____, now produced and shewn to me, and marked "*A.*" and made between *A.B.*, the testator [*or, intestate*] in the judgment [*or, order*] dated the _____ day of _____, 19____, in this cause

940

Affidavit to prove a debt due on a mortgage, and covenant to pay.

[*or, matter*] named, of the one part, and me of the other part, the said *A.B.* granted and conveyed lot No. (*describe it*) unto me, my heirs and assigns: subject to a proviso for redemption thereof, in case the said *A.B.*, his heirs, executors or administrators, should on the day of , 19 , pay to me, my executors, administrators or assigns, the sum of \$5,000, with interest thereon in the meantime at the rate of \$6 per cent. per annum; and the said *A.B.*, for himself, his heirs, executors, and administrators, thereby covenanted with me, to pay me the said sum of \$5,000, with interest as aforesaid, according to the said proviso. The said mortgage was given to secure the sum of \$5,000 cash, which was actually lent and advanced by me to the said *A.B.* at the date thereof (*or as the case may be*).

2. On the day of , 19 , the said *A.B.* paid to me the sum of \$1,000 in part discharge of the said \$5,000.

3. The said *A.B.* was at the time of his death, and his estate still is, justly and truly indebted to me in the sum of \$4,000, residue of the said \$5,000, with interest on the said \$4,000 at the rate aforesaid, from the day of , 19 , under and by virtue of the said indenture.

4. And I, speaking positively (*continue as in par. 3 of No. 939, to the end: varying the statement where necessary*).

5. I further say that I am not now, and never have been since the date of the said mortgage, nor hath nor have any person or persons, by my order or to my knowledge or belief, for my use, been in the occupation of the said mortgaged premises, or of any part thereof, nor in receipt of the rents, issues or profits of the same or any part thereof.

(*Formal parts: see No. 744.*)

941

Affidavit to prove a debt due on a common money bond.

1. *A.B.*, the testator [*or, intestate*] in the judgment [*or, order*] dated the day of , 19 , in this cause [*or, matter*] named, made his bond, dated the day of , 19 , to me in the penal sum of \$200, conditioned for the payment by him, his executors or administrators, to me of the said sum of \$200, on the day of , 19 , together with interest thereon, in the meantime, at the rate of per cent. per annum; and which said bond is now produced and shewn to me, and is marked A. (*Shew consideration, as in No. 940.*)

2. The said *A.B.*, was at the time of his death, and his estate still is, justly and truly indebted to me in the said sum of \$200, with interest thereon at the rate aforesaid from the day of , 19 , upon and by virtue of the said bond.

3. And I, speaking positively (*continue as in par. 3 of No. 939, to the end: varying the statement, where necessary*).

942

Proceed as in No. 941 to conditioned; and continue thus: The like, on bond to secure an annuity.
for the payment by him, his executors or administrators, of the sum of \$20 a year to me, during the life of *E.F.*; who is still living (*or as may be*); and which said bond is now produced and shewn to me, and is marked "A." (*shew consideration as in No. 840.*)

2. The said *A.B.* was at the time of his death, and his estate still is, justly and truly indebted to me in the sum of \$40, for arrears of the said annuity computed to the day of , 19 , under and by virtue of the said bond.

3. And I, speaking positively (*continue as in par. 3 of No. 939, to the end: varying the statement, where necessary*).

(*Formal parts: see No. 744.*)

943

1. *A.B.*, the testator [*or, intestate*] in the judgment [*or, The like, on a bill of exchange.*
order] dated the day of , 19 , in this cause [*or, matter*] named, was at the time of his death, and his estate still is, justly and truly indebted to me in the sum of \$80, for principal money due on a bill of exchange dated the , 19 , drawn by me upon and accepted by the said *A.B.*, for the payment of \$80 to me months after the date thereof;

Or, due on a bill of exchange, dated, &c., drawn by one *C.D.* upon and accepted by the said *A.B.*, for the payment of \$80 to me months after the date thereof;

Or, due to me as indorsee of a bill of exchange, dated, &c., drawn by *C.D.* upon and accepted by the said *A.B.*, for the payment of \$80 to the order of the said *C.D.* months after the date thereof, and by him indorsed to me (*or as may be*);

together with interest on the said principal sum, at the rate of per cent. per annum, from the day of , 19 ; and which said bill of exchange is now produced and shewn to me, and is marked "A." (*shew consideration, as in No. 940.*)

2. And I, speaking positively (*continue as in par. 3 of 939, to the end: varying the statement, where necessary*).

944

Affidavit to prove a debt due on a promissory note.

Proceed as in No. 943, to principal money; and continue thus: due on a promissory note dated the , 19 , for \$90, made by the said *A.B.*, whereby he promised to pay to me or my order the sum of \$90 one month after the date thereof;

Or, due on a promissory note dated, &c., for \$90, made by the said *A.B.*, and payable to me on demand;

Or, due to me as indorsee of a promissory note, dated, &c., made by the said *A.B.*, for the payment of \$90 to the order of *E.F.* months after the date thereof, and by the said *E.F.* indorsed to me (*or as may be*);

together with interest (*continue as in No. 943 to the end: substituting promissory note for bill of exchange*).

945

The like, on a cheque.

Proceed as in No. 943, to principal money; and continue thus: due to me as the payee of a banker's cheque, dated the , 19 , drawn by the said *A.B.* on Messrs. *C. D. & Co.*, for the payment of \$30 to me or bearer, on demand;

Or, due to me as the bearer of a banker's cheque, dated, &c., drawn by the said *A.B.* on Messrs. *C. D. & Co.* for the payment of \$30 to *E.F.* or bearer, on demand, and by the said *E.F.* transferred and delivered to me;

which said cheque has been duly presented to, and refused payment by, the said Messrs. *C. D. & Co.*, and is now produced and shewn to me, and is marked "A."

2. And I, speaking positively (*continue as in par. 3 of No. 939, to the end: varying the statement, where necessary*).

(*Formal parts: see No. 744.*)

946

1. *A.B.*, the testator [*or, intestate*] in the judgment [*or, order*], dated the day of , 19 , in this cause [*or, matter*], named, was at the time of his death, and his estate still is, justly and truly indebted to me in the sum of \$150 for (*state what; as in the following examples:*

Affidavit to prove a debt due on simple contract.

for money lent by me to the said *A.B.* at his request.

for money paid by me for the use of the said *A.B.* at his request.

for money received by the said *A.B.* for my use.

for money found to be due from the said *A.B.* to me, on an account stated between us.

for goods sold and delivered to me by the said *A.B.*

for work done, and materials for the same provided by me for the said *A.B.* at his request.

for salary due and payable from the said *A.B.* to me, for services done by me for the said *A.B.* as his clerk, and on his retainer.

for work done by me as the agent of and for the said *A.B.*, and on his retainer, and for commission and reward due and of right payable from him to me in respect thereof.

for work done as solicitor, and materials for the same provided by me for the said *A.B.*, upon his retainer, and for fees due and payable to me in respect thereof, and for money paid by me for the use of the said *A.B.*, at his request.)

If so: and in the further sum of \$ for interest upon, and for the forbearance at interest to the said *A.B.* by me, at his request, for divers spaces of time, of moneys due and owing to me from the said *A.B.*; and which interest the said *A.B.* contracted and agreed with me to pay me.

2. The full particulars of my aforesaid demand are set forth in the paper writing now produced and shewn to me, and marked "*A.*"—*Where applicable, add:* The prices charged in the said paper writing marked "*A.*" are fair and reasonable, and such as are usual and customary in the trade or business [*or, profession*] of [*a timber merchant or as may be*]: as I know from having carried on such trade, &c., for years last past.

3. And I, speaking positively (*continue as in No. 939, to the end: varying the statement, where necessary*).

947

Affidavit by a personal representative, to prove a debt due to the estate.

(Court and style of cause: see No. 949.)

I, *C.D.*, of (*residence and addition*), the executor of the will [or, administrator of the personal estate] of *E.F.*, late of (*residence and addition*): who died on the day of , 19 ; acting under probate of such will [or, letters of administration of such estate] granted to me on the day of , 19 , make oath and say, as follows:

1. *State, in numbered paragraphs, the nature and existence of the debt: as in Nos. 939-946; and conclude as follows:*

2. And I, speaking positively for myself, and to the best of my knowledge and belief as to other persons, lastly say, that the said *E.F.* did not in his lifetime, and I have not, nor have nor hath any other person or persons by the order of the said *E.F.*, or of myself, or for his or my use, received the said sum of \$ nor any security or satisfaction whatsoever therefor (*or as may be*).

Notice to Creditors to produce Documents. (Rule 705.)

(*Short title.*)

948

Notice to creditors to produce documents, being that referred to in Rule 705.

You are hereby required to produce, in support of the claim sent in by you, against the estate of *A.B.*, deceased (*describe any document required*), before the Master in Ordinary (*or other Master or officer*), at his chambers at, &c., on the day of , 19 , at o'clock in the noon.

Dated this day of , 19 .

G.R., of, &c., solicitor for the plaintiff.
[or, defendant, or as may be.]

To Mr. *S.T.*

Con. Rules, 1888, Form 37.

Affidavit of Executor or Administrator as to Claims.
(*Rule 708.*)

949

Affidavit of executor or administrator as to claims.
(b)

In the High Court of Justice.

Between—*A.B.*, Plaintiff.
and
C.D., Defendant.

We, *A.B.*, of, &c., the above-named plaintiff [or defendant, or as may be], the executor [or, administrator], of *C.D.*,

(a) Con. Rules, 1897, Form 80.

(b) Con. Rules, Form 21.

late of in the County of , deceased, and *E.F.*,
of, &c., solicitor, severally make oath, and say as follows:—

I, the said *E.F.* [*solicitor*] for myself say as follows:—

1. I have, in the paper writing now produced and shewn to me, and marked “A,” set forth a list of all the claims, the particulars of which have been sent in to me by persons claiming to be creditors of the said *C.D.*, deceased, pursuant to the advertisement issued in that behalf, dated day of , 19 .

And I, the said *A.B.*, for myself, say as follows:—

2. I have examined the several claims mentioned in the paper writing now produced and shewn to me, and marked *A.*, and I have compared the same with the books, accounts, and documents of the said *C.D.* (*or as may be, and state any other inquiries or investigations made*), in order to ascertain as far as I am able, for which of such claims the estate of the said *C.D.* is justly liable.

3. From such examination (*and state any other reasons*), I am of opinion, and verily believe, that the estate of the said *C.D.* is justly liable for the amounts set forth in the sixth column of the first part of the said paper writing marked “A”; and to the best of my knowledge and belief, such several amounts are justly due from the estate of the said *C.D.*, and proper to be allowed to the respective claimants named in the said schedule.

4. I am of opinion that the estate of the said *C.D.* is not justly liable for the claims set forth in the second part of the said paper writing marked “A,” and the same ought not to be allowed without proof by the respective claimants [*or, I am not able to state whether the estate of the said C.D., is justly liable for the claims set forth in the second part of the said paper writing marked “A,” or whether such claims, or any parts thereof, are proper to be allowed without further evidence.*]

Sworn, &c.

Exhibit Referred to in the above Affidavit.

(*Short Title.*)

List of claims the particulars of which have been sent in to *E.F.*, the solicitor of the plaintiff [*or, defendant, or as may be*], by persons claiming to be creditors of *C.D.*, deceased, pursuant to the advertisement issued in that behalf, dated the day of , 19 .

This paper writing, marked "A," was produced and shewn to _____, and is the same as is referred to in his affidavit, sworn before me this _____ day of _____, 19__.

W.B., &c.

First Part.—Claims proper to be allowed without further evidence:—

Serial No.	Names of Claimants.	Addresses and Descriptions.	Nature of Claim.	Amount Claimed.	Amount proper to be allowed.
					\$ c.

Second Part.—Claims which ought to be proved by the claimants:—

Serial No.	Names of Claimants.	Addresses and Descriptions.	Nature of Claim.	Amount Claimed.
				\$ c.

Con. Rules, 1888, Form 50.

950

Warrant to show cause why applicant should not have leave to make a claim, where the time allowed has expired, but before Master's report.

(Formal parts: see No. 957.)

To shew cause why A.B., of (residence and addition), notwithstanding the time limited for proving claims has expired, should not be at liberty, under the judgment [or, order], dated the _____ day of _____, 19__, in this cause [or, matter], to come in and establish his claim [state in respect of what; as thus: as a creditor upon the estate of C.D., the testator or, intestate] in the said judgment [or, order] named, for the sum of \$ _____.

(Title and address: see No. 1324.)

The humble petition of A.B., of (residence and addition),

951

Petition to be admitted as a creditor, after direction to apportion fund amongst certified creditors, but before apportionment made.

Sheweth as follows:

Shew nature of the proceedings; as thus: 1. This action [or, matter] was instituted for the administration of the estate of C.D.; and by the judgment made therein, dated the day of , 19 , the usual accounts and inquiries were directed to be taken and made, including an account of the debts of the said C.D.

2. The Master at made his report, dated the day of , 19 , in pursuance of the said judgment; and thereby certified the result of the said account of debts, and of the other accounts and inquiries directed by the said judgment.

3. The said Master's report having become confirmed on the day of , 19 , this action came on to be heard on further directions [or, on motion for distribution] on the day of , 19 ; and by a judgment (or, order) then made of that date, [the costs of this action were directed (to be taxed, and)] to be paid out of the sum of \$1,000 cash in Court to the credit of this cause; and the residue of such cash was thereby directed to be apportioned amongst the creditors of the said C.D., in proportion to the respective amounts certified to be due to them by the said Master's report [or, the amount of the estate realized herein was directed to be paid out of Court and distributed in accordance with the said report, or as may be the case].

4. Pursuant to the said order, the costs thereby directed to be taxed have been carried into the office of the Taxing officer; but the taxation thereof is not yet completed; and no apportionment of the residue of the said fund has yet been made [or, the said money in Court has not yet been distributed as directed by said order].

Shew nature of petitioner's claim; and why omitted to be made before; as thus: 5. The said C.D. was, at the time of his death, and his estate still is, justly and truly indebted to your petitioner in the sum of \$80, for goods sold and delivered by your petitioner to the said C.D., in the course of your petitioner's trade as a wine merchant.

6. Your petitioner, on the day of , 19 , for the first time became aware of the death of the said *C.D.*, and that his estate was under administration by this Honourable Court. By reason of your petitioner's ignorance of the existence of this [action], no claim by or on the part of your petitioner in respect of his said debt was made under the said judgment; and your petitioner's said debt is omitted from the said Master's report.

7. Your petitioner is now desirous to establish his said debt against the assets of the said *C.D.* in this action.

Your petitioner therefore prays that he may be allowed to rank as a simple contract creditor upon the estate of the said *C.D.* for the said sum of \$80, and for interest thereon at the rate of \$6 per cent. per annum from the date of the said judgment; and that, notwithstanding the said judgment on further directions [*or, order for distribution*], the residue which will remain of the said \$1,000, after payment of the said costs, may be directed to be apportioned amongst your petitioner, in respect of his said debt and interest, and the several creditors of the said *C.D.* certified by the said report, in proportion to the respective amounts so due to your petitioner and the said other creditors; and that the apportioned sums may be directed to be paid to your petitioner and the said other creditors accordingly.

(*Formal parts: see No. 403.*)

952

Notice of motion to be admitted as a creditor, after direction to apportion fund amongst certified creditors, but before apportionment made.

on the part of *A.B.*, of (*residence and addition*):

1. That he may be allowed to rank as a simple contract creditor upon the estate of *C.D.*, the testator [*or, intestate*] in the judgment in this cause, dated the day of , 19 , named, for the sum of \$80, and for interest thereon at the rate of per cent. per annum from the date of the said judgment.

2. That, notwithstanding the judgment on further directions [*or, order for distribution*], dated the day of , 19 , the residue which will remain of the sum of \$1,000 therein mentioned, after payment of the costs [thereby directed to be taxed] may be directed to be apportioned amongst

the applicant, in respect of his said debt and interest, and the several other creditors of the said *C.D.* whose debts are certified by the Master's report dated the day of , 19 , in proportion to the respective amounts due to the applicant and the said other creditors.

3. That the apportioned sums may be directed to be paid to the applicant and the said other creditors accordingly. And take notice (*&c.*, as in *No.* 403).

Notice to Creditor that Claim Allowed. (Rule 711.)

(Style of cause.)

The claim sent in by you against the estate of *A.B.*, deceased, has been allowed at the sum of \$ [with interest thereon at \$ per cent. per annum, from the day of , 19 , and \$ for costs, or as the case may be.]

953

Notice to creditor that claim allowed under Rule 711, being Form 81 referred to, in that Rule. (a)

If part only allowed, add: If you claim to have a larger sum allowed, you are hereby required to prove such further claim, and you are to file (*&c.*, as in *Form* 954).

G.R., of, &c.

Dated, &c.

Solicitor for Plaintiff,

[*Or*, defendant, or as may be].

To Mr. *P.P.*

Con. Rules, 1888, Form 38.

Notice to Creditor to Prove his Claim. (Rule 711.)

(Short style of cause.)

You are hereby required to prove the claim sent in by you against the estate of *A.B.*, deceased. You are to file such affidavit as you may be advised in support of your claim, give notice thereof to , Master (*or as the case may be*), on or before the day of , 19 ; and attend person-

954

Notice to creditor to prove his claim under Rule 711, being No. 82 referred to in that Rule. (b)

(a) Con. Rules, 1897, Form 81.

(b) Con. Rules, 1897, Form 82.

ally, or by your solicitor, at his Chambers, on the day of
 , 19 , at o'clock in the noon, being the time ap-
 pointed for adjudicating on the claim.

Dated this day of , 19 .

G.R., of, &c.,
 Solicitor for the Plaintiff [*or* Defendant,
or as may be].

To Mr. *S.T.*

Con. Rules, 1888, Form 39.

Notice that Cheques may be Received. (Rule 714.)

(Short style of cause.)

956

Notice to
 creditors that
 cheques
 may be re-
 ceived under
 Rule 714, be-
 ing Form No.
 83 in Con.
 Rules. (a)

The cheques for the amounts directed to be paid to the
 creditors of *A.B.*, deceased, by an order made in this action
 [*or*, matter] dated the day of , 19 , may be obtained
 at the Accountant's Office, in Osgoode Hall, Toronto, on and
 after the day of , 19 .

G.R., of, &c.,
 Solicitor for the Plaintiff [*or* Defendant,
or as may be].

To Mr. *W.S.*,

Con. Rules, 1888, Form 40.

(Short style of cause.)

957

Master's
 warrant.

By virtue of an order [*or*, judgment] of reference, I do
 appoint the several days and times hereunder written for
 the several purposes also hereunder written, at my Chambers,
 in the of , at which time and place all parties con-
 cerned are to attend.

Dated the day of , 19 .

(Underwriting here.)

A.B.,

Master.

[*See next form as to mode of underwriting.*]

958

Forms of
 underwriting
 warrants :

Forms for underwriting warrants.

To consider the judgment [*or*, judgment on further dir-
 ections, *or*, order] dated, &c.

(1) To con-
 sider judg-
 ment.

The plaintiff to shew cause why the prosecution [or, (2) To change further prosecution] of the [order] made herein on the day of, &c., should not be committed to the defendant *A.B.* [or, to *A.B.*, a creditor who has established his claim herein before the Master].
conduct of reference.

The defendant *C.D.* to bring in his account, duly verified by affidavit, in answer to the 4th, 5th, and 7th inquiries (or as may be), directed by the judgment [or, judgment on further directions in this cause, or, order], dated, &c., on the 5th February, 19 , at 10 a.m.
(3) To bring in accounts.

To proceed on the accounts of *C.D.*, with a view to ascertaining what is admitted and what is contested, on at, &c.
(4) To proceed on accounts. (b)

To proceed on the accounts of *C.D.*, and take notice, that you are required to admit the same, or such parts thereof as you can properly admit, on at, &c.
(5) Another form. (c)

To hear and determine the matter referred to me under the order dated, &c., on at, &c.
(6) To hear and determine.

To tax costs under the order, &c.
(7) Tax costs.

To settle report under the order, &c.
(8) Settle report.

Where one day is appointed for all these purposes by the warrant, it is usual to say, to hear and determine, to tax costs, and settle report under the order, &c.

959

At the request of the plaintiff [or, defendant—or other party, as the case may be], I direct that the defendant *A.B.* [or, the plaintiff, *C.D.*—or other party, as the case may be], do, on or before ten of the clock of the day of next, produce and leave in my office, under oath, all deeds, books, papers, writings and documents (if any particular deed, book, or writing be desired, mention it specifically) in his [or, their] custody or power in any way relating to the matters in question in this cause.
Master's directions for production, made in the presence of the solicitor, and entered in his book.

(b) See Rules 678 and 679.

(c) See also Rule 679.

*(Short style of cause.)***960**

Advertise-
ment for clai-
mants (other
than creditors
of a deceased
person), to
come in.

Heirs.

Pursuant to a judgment [*or, an order*] of the High Court of Justice, made in [*set out the short style of the matter or cause; as thus:* In the matter of the trusts of an indenture dated the 4th January, 19 , between A.B. and C.D.—*or, in a cause Jones against Styles—or as may be*], bearing date the day of the [*state the special object of the advertisement; as thus:* the persons claiming to be the heirs-at-law of A.B., late of (*residence and addition*), living at the time of the said A.B.'s death on the day of , 19 ,

Next of kin.

Or, the persons claiming to be next of kin, according to "the Statute of Distribution" of A.B., late of, &c., living at the time of his death on the day of , 19 , or to be the legal personal representatives of such of the said next of kin as are now dead,

*Cestuis que
trustent.*

Or, the persons claiming to be interested under a certain indenture dated the day of , 19 , executed by A.B., then of, &c., for the benefit of his creditors,

Legatees.

Or, the persons claiming to be entitled to the legacy of \$4,000 bequeathed by the will of the testator Isaac Brown, late of , in the County of , gentleman, to the child or children of his nephew William Saunders,

Incumbran-
cers on legacy.

*Or, the persons claiming to be entitled to any mortgage, charge or other incumbrance upon or affecting the legacy of \$4,000 bequeathed to John Jones, now or late of (*residence and addition*), by the will of his father, Ephraim Jones, late of (*residence and addition*), who died on or about the day of , 19 .]*

are, by their solicitors, on or before the day of , 19 , at 10 o'clock a.m., to come in and prove their claims, at the Chambers of the Master of the Court at (*or as may be*): Or, in default thereof, they will be peremptorily excluded from the benefit of the said judgment [*or, order*].

Dated this day of , 19 .

A.B.,
Master at

(Formal parts: see No. 744.)

961

1. John Hughes, late of (*residence and addition*), the Affidavit in answer to an inquiry as to heirship and kindred. intestate in the judgment [*or, order*] in this cause [*or, matter*] dated the day of , 19 , named, was my son.

2. The said John Hughes died on the day of , 19 . He is the same person as "John Hughes," in the certificate marked A., now produced and shewn to me, named; and purporting to be a copy of an entry of his burial in the register book of burials kept for the parish of W., in the County of Y., for the year 19 .

3. The said John Hughes was married twice only; namely: (1) On the day of , 19 , to Laura Thornton, at the parish church of S., in the city of T.; and (2) on the day of , 19 , to Jane Watts, at the parish church of P., in the County of R.

4. The said John Hughes and Laura Thornton are the same persons as "John Hughes," bachelor, and "Laura Thornton," spinster, respectively named in the certificate marked B., now produced and shewn to me; and purporting to be a copy of an entry of their marriage in the register book of marriages kept for the said parish of S., for the year 19 .

5. The said Laura Thornton, then Laura the wife of the said John Hughes, died on the day of , 19 . She is the same person as "Laura Hughes," in the paper writing marked C., now produced and shewn to me, named; and purporting to be a copy, under the seal of the [General Register Office], of the entry No. , in the certified entries of deaths in the town of K., in the County of L., for the year 19 .

6. The said John Hughes and Jane Watts are the same persons as "John Hughes," widower, and "Jane Watts," widow, respectively named in the paper writing marked D., now produced and shewn to me; and purporting to be a copy of an entry of their marriage in the register book of marriages kept for the said parish of P., for the year 19 .

7. The said John Hughes had two children only by his wife Laura Hughes, formerly the said Laura Thornton; namely: (1) Albert Hughes, and (2) Maria Hughes.

8. The said Albert Hughes is the same person as "Albert, son of John and Laura Hughes," in the paper writing marked E., now produced and shewn to me, named; and purporting to be a copy of an entry of his baptism in the registry book of baptisms kept for the parochial chapelry of L., in the county of M., for the year 19 .

9. The said Maria Hughes is the same person as "Maria, daughter of John and Laura Hughes," in the paper writing marked F., now produced and shewn to me, named; and purporting to be a copy of an entry of her baptism in the last mentioned register book, for the year 19 .

10. The said Maria Hughes has been married once only; namely: on the day of , to Thomas Jones, of (*residence and addition*), at the parish church of N., in the City of O. They are the same persons as "Thomas Jones," bachelor, and "Maria Hughes," spinster, respectively named in the paper writing marked G., now produced and shewn to me; and purporting to be a copy of an entry of their marriage in the register book of marriages for the said parish of N., for the year 19 .

11. The said John Hughes had no child by his wife Jane Hughes, formerly the said Jane Watts, and now his widow.

12. The said Jane Hughes and Albert Hughes, and the said Thomas Jones and Maria his wife, formerly the said Maria Hughes, are respectively now living.

13. *Shew means of knowledge.*

Sworn, &c.

Inquiries as to Legacies and Annuities.

(Title of cause or matter.)

962

Affidavit by a beneficiary, as to incumbrances by him.

I, John Jones, of (*residence and addition*; and identify the deponent with the cause or matter; as thus: one of the defendants above named—or, in the pleadings in this cause named—or, one of the children of Ephraim Jones, the testator in the judgment in this cause [*or, matter*] dated the day of , 19 , named—(*or as may be*), make oath and say as follows:

1. I have not at any time mortgaged, charged or otherwise incumbered the legacy of \$1,000 bequeathed to me by the will of the said testator Ephraim Jones, or any part thereof (*or as may be—according to the inquiry directed*), to, or in favour of, any person or persons whomsoever—[*if so*: save and except as hereinafter mentioned, that is to say: By an indenture dated the day of , 19 , and made between myself of the one part, and Charles Davies, of, &c., of the

other part, I assigned the said legacy, and the interest due, and to accrue due in respect thereof, unto the said Charles Davies, to secure to him the repayment of \$400, with interest thereon at the rate of 5 per cent. per annum; which sum, with interest thereon at the rate aforesaid from the day of , 19 , remains due to the said Charles Davies upon the security of the said indenture (*or as may be*).

Sworn, &c.

(*Title of cause or matter.*)

I, A.B., of (*residence and addition*), the above-named de-
fendant, and the executor of the will of Ephraim Jones, the
testator in the judgment [*or, order*] in this cause [*or, mat-*
ter] dated the day of , 19 , named (*or as may be*),
make oath and say as follows:

963

Affidavit by
an executor,
or a trustee,
as to notices
received of in-
cumberances.

1. I have not at any time received notice of any mortgage, charge, or incumbrance created by any person or persons interested under the will of the said Ephraim Jones of the legacies, shares or interests thereby bequeathed to them respectively, or any part or parts thereof (*or as may be—ac-*
cording to the inquiry directed)—[*if so*: save and except the

notices now produced and shewn to me, and marked respectively, A., B., &c.; and which notices were received by me on the respective days set forth in the first column of the schedule hereto; and the short particulars of the said notices are set forth in the second column of such schedule, opposite the respective days on which such notices respectively were so received.]

The Schedule above referred to.

Date when notice received.	Short Particulars.
1st January, 19	A notice, dated——19——, from Messrs. A. & B., of, &c., of an assignment by John Jones of his legacy of \$1,000 to Charles Davies, of, &c., to secure \$100 and interest.
8th August, 19	A notice, &c.

(Short style of cause.)

964

List of Legacies remaining unpaid.

List of Legacies remaining unpaid.

Serial No.	Names of Legatees.	Descriptions.	Amounts of principal and interest.	Total amounts due.
1	James Oliver ...	Son of testator, an infant	\$ cts. 400 00	\$ cts.
		Interest	7 05	407 05
2	Mary Russell...	of London, widow ...	50 00	
		Interest from 1st January, 19—, the death of testator	4 08	54 08
3	Jane, the wife of John Williams ..	of St. Catharines, Paid in part....	250 00 50 00	
		Interest	200 00 14 11	214 11
		Total		675 24

(Short style of cause.)

965

List of Annuities and Arrears due.

List of Annuities, and arrears due.

Serial No.	Names of Annuitants.	Description of Annuitants and Nature of Annuities.	Amounts of Annuities.	Amounts of Arrears due.
1	Mary Jones	Spinster, daughter of testator during her life.....	\$ cts. 50 00	\$ cts. 25 00
		Totals.....	50 00	25 00

*(Title of the cause.)***966**

We, A.B., of (residence and addition), C.D., of, &c., and E.F., of, &c., the above-named defendants (*or as may be*), severally make oath and say, as follows:—

Affidavit by joint executors and trustees, verifying their accounts, and answering the usual inquiries, as to real and personal estate.

1. We have according to the best of our knowledge, remembrance, information and belief, set forth in the first Schedule hereunder written, a full, true, and particular account and inventory of the personal estate of or to which G.H., the testator [*or, intestate*] in the judgment [*or, order*] dated the day of , 19 , made in this cause named or referred to, and who died on the day of , 19 , was possessed or entitled at the time of his death—if *the judgment directs only an account of personal estate not specifically bequeathed, add:* and not by him specifically bequeathed.

Inventory of personal estate at death. (a)

2. Save what is set forth in the said first Schedule—[*if so: and what is by the said testator specifically bequeathed—*] the said testator [*or, intestate*] was not, to the best of our knowledge, information, or belief, at the time of his death possessed of, or entitled to, any debt or sum of money due to him from us, [*or any*] or either of us, on any account whatsoever, nor to any leasehold, or other personal estate, goods, chattels, or effects, in possession, or reversion absolutely, or contingently, or otherwise howsoever.

3. The debts of the said testator [*or, intestate*] are those set forth in our affidavit filed on the day of , 19 (b).

4. The testator's [*or, intestate's*] funeral expenses have been paid; and the same consist of the items of disbursement numbered and in the account marked A. hereinafter referred to [*or, if not paid, state the amount due, and to whom due: as thus:* The said testator's funeral expenses amount to \$; and the same remain due to J.S., of N., in the (County) of M., undertaker].

Funeral expenses.

(a) The first Schedule to the affidavit should shew the state of the assets at the testator's death; the second, at the time the affidavit is sworn; and the accounts of personal estate verified by the affidavit, should disclose all the receipts and payments in respect of the assets between those periods. Thus, where a testator leaves a sum of bank stock, which the executor afterwards sells, and invests the proceeds in Dominion stock; the bank stock will appear in the first Schedule; the proceeds of the sale on the debit side of the account; the cost of the Dominion Stock on the credit side; and the amount of the Dominion Stock will form an item in the second Schedule, as an asset outstanding or undisposed of. For form of these Schedules, see Nos. 967 *et seq.*

(b) The form of this affidavit is given, in No. 949.

Account of
personal es-
tate.

5. We have, in the account marked A. now produced and shewn to us (*a*), according to the best of our knowledge, information and belief, set forth a full, true and particular account of the personal estate of the said testator [*or*, intestate]—*if so*: not by him specifically bequeathed—which has come to our hands, or to the hands of [any or] either of us, or to the hands of any person or persons by our, [or any] or either of our order, or for our, [or any] or either of our use, with the times when, the names of the persons from whom, and on what account, the same has been received; and also a like account of the disbursements, allowances, and payments made by us, [or any] or either of us, in respect of, or on account of, the said testator's [*or*, intestate's] funeral expenses, debts, and personal estate: together with the purposes for which the same were disbursed, allowed, or paid.

6. We have, in the account marked B. now produced and shewn to us, according to the best of our knowledge, information and belief, set forth a full, true and particular account of the legacies left by the said testator. (*b*)

7. We, each speaking positively for himself, and to the best of his knowledge and belief as to other persons, further say: that save and except as appears in the said account marked A., we have not, nor has [any or] either of us, nor have nor has any other persons or person by our, [or any] or either of our order, or for our, [or any] or either of our use, possessed, received, or got in, any part of the said testator's [*or*, intestate's] personal estate, nor any money in respect thereof; and that the said account marked A. does not contain any item of disbursement, allowance, or payment, other than such as has actually been disbursed, paid, or allowed, on the account aforesaid.

Personal es-
tate outstand-
ing.

8. To the best of our knowledge, information, and belief, the personal estate of the said testator [*or*, intestate] now outstanding, or undisposed of, consists of the particulars set forth in the second Schedule hereunder written (*c*).

(*a*) For form of this account, see No. 971. Where it has been directed that, in taking the account, capital is to be distinguished from income, the account should be divided into two parts: the first embracing the transactions as to capital; the second as to income; and the affidavit should be varied accordingly.

(*b*) For form of this account see No. 972.

(*c*) This Schedule should contain all the existing assets: such as Dominion Stock, whether in the executors' names or in Court, and any cash in the hands of the executors: *Bloxam*. 48. For form of this Schedule, see No. 968.

9. Save what is set forth in the said second Schedule, there is not, to our knowledge, information, or belief, any part of the said testator's [*or*, intestate's] personal estate now outstanding, or undisposed of.

10. We have, according to the best of our knowledge, re-
membrance, information, and belief, set forth in the third
Schedule (*d*) hereunder written the particulars of all the real
estate which the said testator [*or*, intestate] was seised of,
or entitled to at the time of his death. Real estate at death.

[*Or*, at the date of his will, and at the time of his death—and, in the latter case, if any estates were acquired between those periods, distinguish the same; as thus:

10. We have (&c.: as above, to belief). set forth in the first part of the third Schedule hereunder written the particulars of all the real estate which the said testator [*or*, intestate] was seised of, or entitled to, at the date of his will, and in the first and second parts of such Schedule the particulars of all the real estate which the said testator was seised of, or entitled to, at the time of his death.]

11. Save what is set forth in the said Schedule, the said testator [*or*, intestate] was not, to the best of our knowledge, information, or belief, at the date of his will or at the time of his death, seised of, or entitled to, any real estate, in possession, remainder or reversion, absolutely or contingently, or otherwise howsoever.

12. We have, according to the best of our knowledge, in-
formation, and belief, set forth in the fourth Schedule here-
under written the particulars of all the incumbrances affecting
the said testator's [*or*, intestate's] real estate, and what part
thereof such incumbrances respectively affect. (*e*) Incumbrances.

13. We have, in the account marked C. now produced
and shewn to us (*f*), according to the best of our knowledge,
information, and belief, set forth a full, true, and particular
account of all the rents and profits of the said testator's [*or*,
intestate's] real estate which have come to our hands, or to
the hands of [any or] either of us, or to the hands of any
person or persons by our, [or any] or either of our order,
Account of rents and profits.

(*d*) For form of this Schedule, see No. 969.

(*e*) For form of this Schedule, see No. 970. If there is no incumbrance, alter the paragraph accordingly: see No. 973, par. 3.

(*f*) For form of this account, see No. 973.

or for our, [or any] or either of our use; and the times when, the names of the persons from whom, on what account, in respect of what part of such estate the same have been received, and the times when the same became due; and also a like account of the disbursements, allowances, and payments made by us, [or any] or either of us, in respect of the said testator's [or, intestate's] real estate, or the rents and profits thereof, and the times when, the names of the persons to whom, and the purposes for which, the same were made.

14. And we, each speaking positively for himself, and to the best of his knowledge and belief as to other persons, further say; that, save and except as appears in the said account marked C., we have not, nor has [any or] either of us, nor have nor has any other persons or person by our or [any or] either of our order, or for our [or any] or either of our use, possessed, received, or got in, any rents or profits of the said testator's [or, intestate's] real estate, nor any money in respect thereof; and that the said account marked C. does not contain any item of disbursement, payment, or allowance, other than such as has actually been disbursed, paid or allowed, as above stated.

967

Schedules to
foregoing
affidavit.

(1) Person-
alty at death.

THE FIRST SCHEDULE ABOVE REFERRED TO.

Account of the testator's [or, intestate's] personal estate,
at his death.

(Set out the particulars; as in the following examples:)

1. \$500 cash in the house.
2. \$1,000 cash at the testator's bankers, the Bank of .
3. \$1,000, Ontario Bank Stock standing in the testator's name.
4. \$100 due from John James, for half-year's rent of house at , to 19 .
5. \$322.60, balance remaining due from John Thomas, on account of half-year's rent of farm at , to 19 .
6. \$300, a debt due from Samuel Jones, on a bond: with interest from , at per cent.
7. A leasehold house situate at , held under a lease for a term of years, which will expire on , 19 , at a rent of \$ a year: underlet to James Evans for a term which will expire on , 19 , at a rent of \$50 a year.
8. \$25, half a year's rent due from the said James Evans on , 19 .

THE SECOND SCHEDULE ABOVE REFERRED TO.

Personal estate outstanding or undisposed of.

*(Set out the particulars; as in the above examples.)***968**

(2) Personal estate outstanding or undisposed of.

THE THIRD SCHEDULE ABOVE REFERRED TO.

Real estate.

969

(3) Realty.

(Set out a short particular of the real estate; as in the following examples:)

1. A freehold mansion, and grounds attached, containing about three acres, situate at , and called "The Evergreens:" in the testator's occupation at his death, and now in hand, described as follows *(give full description)*.

2. A freehold farm, called "Low End Farm," situate at , containing about 500 acres, and in the occupation of James Evans, under a lease for a term which will expire at , 19 , at the yearly rent of \$600, described as follows *(give full description)*.

3. Twenty freehold cottages, situate at aforesaid, in the occupation of Michael Sullivan, &c., as weekly tenants, at rents amounting collectively to \$ a year, described as follows *(give full description)*.

THE FOURTH SCHEDULE ABOVE REFERRED TO.

Incumbrances affecting the real estate.

970

(4) Incumbrances on realty.

(Set out a short particular of the incumbrances; and shew what part of the above real estate is subject to each; as in the following examples:)

1. The mansion and grounds numbered 1 in the third schedule above written are subject to a mortgage created by the testator by indenture dated, &c., in favour of Reuben Johnson, and now vested in Alfred Symes, of *(residence and addition)*, as security for \$500 due to him, with interest at per cent.

2. The farm numbered 2 in the said third schedule is charged with the payment of an annuity of \$40 to Jemima Brown, of, &c., widow, during her life, under the will of the testator's brother, Ephraim Hughes.

3. The parcels of land numbered 4 in the said third schedule are subject to the dower of *A.B.*, widow of the said testator (*or as the case may be*).

A.

(*Short style of cause.*)

971

Account of personal estate, referred to in No. 966. This account marked A. was produced and shewn to *A.B.*, *C.D.*, and *E.F.* (*or as may be*), and is the account "A" referred to in their affidavit sworn this day of , 19 .

Before me,

(*Signature of the Commissioner or Officer before whom the affidavit is sworn.*)

RECEIPTS.

DISBURSEMENTS.

No. of Item.	Date when received.	Names of persons from whom received.	On what account received.	Amount received. \$ c.	No. of Item.	Date when paid or allowed.	Names of persons to whom paid or allowed.	For what purpose paid or allowed.	Amount paid or allowed. \$ c.
19—					19—				
1		Found in house.	\$ c.	1		James Price ..	Undertaker's bill for funeral	\$ c.
2		Evans & Co...	Balance at bankers		2		Messrs. A. & B.	Solicitor's bill for probate ..	
3		Can. Bank of Commerce	Half year's dividend on \$2,000 6 per cent. stock, due.....		3		John George..	A debt due to him for medical attendance.....	
4		John James ..	Half year's rent of freehold, due.....		4		James Price..	Bond debt of \$1,000, and \$25 for interest thereon from — to	
5		Samuel Jones.	Bond debt of \$300 and interest from — to						
6		James Evans .	Half year's rent of leasehold house, due—.						
7		Wm. Williams	Produce of sale of the above leasehold house.....						

B.

(Short style of cause.)

This account marked B. was produced and shewn to A.B., **972**
C.D. and *E.F.* (*or as may be*), and is the account referred to Account of
legacies re-
ferred to in
No. 966.
 in their affidavit sworn this day of , 19 ,

Before me,

*(Signature of the Commissioner or Officer
before whom the affidavit is sworn.)*

Legacies left by the testator:

1. To his widow, Jane , all his household furniture
(following the words of the will.)
 2. To his son, Y.Z., the sum of \$400, payable *(following
 the words of the will.)*
 3. To his 3 daughters, Ann, Jane, and Mary, the sum of
 \$1,000 each, payable *(following the words of the will.)*
 4. To his son, S.S., lot No. , in the Township of
 in the County of , in fee (*or as may be—follow-
 ing the words of the will.)*
-

C.

(Short style of cause.)

This account marked C. was produced and shewn to A.B., **973**
C.D., and *E.F.* (*or as may be*), and is the account "C" re- Account of
rents and
profits, refer-
red to in No.
966.
 ferred to in their affidavit sworn this day of , 19 .

Before me,

*(Signature of the Commissioner or Officer
before whom the affidavit is sworn.)*

RECEIPTS.

DISBURSEMENTS.

No. of Item.	Date when received.	Names of persons from whom received	On what account, and in respect of what part of the estate received and when due.	Amount received \$ c.	No. of Item.	Date when paid or allowed.	Names of persons to whom paid or allowed.	For what purpose paid or allowed.	Amount paid or allowed \$ c.
1	19—	John James ..	Half y'r's rent for farm in Township of —, due—.		1	19—	Sun Insurance Office	One year's insurance against fire, due—,	
2		Thomas Jones	One quarter year's rent of house at —, due—.		2		Thomas Carpenter	Repairs at John James' farm	
3		John James ..	Same as No. 1, due—.		3		James Francis..	Taxes— half year due 10th October, 19— on Thomas Jones' farm.	

974

(Formal parts: see No. 744.)

Affidavit by joint executors and trustees, verifying their supplemental accounts of personal estate, and rents and profits.

1. We have, in the account marked C., now produced and shewn to us, according to the best of our knowledge, information, and belief, set forth a full, true, and particular account of the personal estate of *G.H.*, the testator in the judgment [*or, order*] made in this cause, dated the day of , 19 , named or referred to, [*if so*: and not by him specifically bequeathed] which, since the day of , 19 (the time to which our former account thereof marked A., verified by our affidavit filed in this cause the day of , 19 , was made up and rendered), has come to our hands (*continue as in par. 5 of No. 966, to the end of that par.*)

2. We, each speaking positively for himself, and to the best of his knowledge and belief as to other persons, further say: that save and except as appears in the said accounts marked A. and C., we have not, nor has [any or] either of us, nor have nor has any other persons or person by our [or any] or either of our order, or for our [or any] or either of our use, possessed, received, or got in any part of the said testator's personal estate, nor any money in respect thereof; and the said account marked C. does not contain any item of disbursement, allowance, or payment, other than such as has

actually been disbursed, paid, or allowed on the account aforesaid.

3. To the best of our knowledge, information, and belief, the personal estate of the said testator now outstanding, or undisposed of, consists of the particulars set forth in the Schedule hereunder written.

4. Save what is set forth in the said Schedule, there is not, to our knowledge, information, or belief, any part of the said testator's personal estate now outstanding, or undisposed of.

5. We have, in the account marked D., now produced and shewn to us, according to the best of our knowledge, information, and belief, set forth a full, true, and particular account of all the rents and profits of the said testator's real estate, which since the day of , 19 , (the time to which our former account thereof, marked B., verified by our said affidavit filed in this cause the day of , 19 , was made up and rendered), have come to our hands, or to the hands of [any or] either of us, or to the hands of any person or persons by our [or any] or either of our order, or for our [or any] or either of our use; and the times when, the names of the persons from whom, on what account, in respect of what part of such estate have been received, and the times when the same became due; and also a like account of the disbursements, allowances and payments made by us, [or any] or either of us, in respect of the said testator's real estate, or the rents and profits thereof, and the times when, the names of the persons to whom, and the purposes for which, the same were made.

6. And we, each speaking positively for himself, and to the best of his knowledge and belief as to other persons, further say; that save and except as appears in the said accounts marked B. and D., we have not, nor has [any or] either of us, nor have nor has any other persons or person by our [or any] or either of our order, or for our [or any] or either of our use, possessed, received, or got in, any rents or profits of the said testator's real estate, nor any money in respect thereof; and that the said account marked D. does not contain any item of disbursement, payment, or allowance, other than such as has actually been disbursed, paid, or allowed as above stated.

The Schedule above referred to.

(Set out the particulars of the personal estate outstanding or undisposed of: For examples, see No. 967.)

(Formal parts: see No. 744.)

975

Affidavit by a sole executor or administrator, verifying his account, and answering the usual inquiries as to personal estate.

1. I have, according to the best of my knowledge, remembrance, information, and belief, set forth in the first Schedule hereunder written a full, true, and particular account and inventory of the personal estate of or to which G.H., the testator [or, intestate] in the judgment [or, order] made in this cause dated the day of , 19 , named or referred to, and who died on the day of , 19 , was possessed or entitled at the time of his death [*in a case of testacy, add—and not by him specifically bequeathed*].

2. Save what is set forth in the said first Schedule, [*in a case of testacy, add, if the judgment or order is so qualified: and what is by the said testator specifically bequeathed*], the said testator [or, intestate] was not, to the best of my knowledge, information, or belief, at the time of his death possessed of, or entitled to, any debt or sum of money due to him from me, on any account whatsoever (*Continue as in par. 2 of No. 966, to the end of par. 3: substituting "intestate's," for "testator's," where applicable*).

4. I have, in the account marked A., now produced and shewn to me, according to the best of my knowledge, information, and belief, set forth a full, true, and particular account of the personal estate [*in a case of testacy, add: of the testator; and if the judgment or order is so qualified, add also: not by him specifically bequeathed, in a case of intestacy, add: of the said intestate*], which has come to my hands, or to the hands of any person or persons by my order, or for my use; with the times when, the names of the persons from whom, and on what account the same has been received; and also a like account of the disbursements, allowances, and payments made by me in respect of, or on account of, the said testator's [or, intestate's] funeral expenses, debts, and personal estate; together with the times when, the names of the persons to whom, and the purposes for which the same were disbursed, allowed, or paid.

5. And I, speaking positively for myself, and to the best of my knowledge and belief as to other persons, further say: that save and except as appears in the said account marked "A," I have not, nor have nor has any other persons or person by my order, or for my use, possessed, received, or got in any part of the said testator's [or, intestate's] personal estate, nor any money in respect thereof; and that the said

account marked "A," does not contain any item of disbursement, allowance, or payment, other than such as has actually been disbursed, paid, or allowed on the account aforesaid.

6. To the best of my knowledge, information and belief, the personal estate of the said testator [*or, intestate*] now outstanding, or undisposed of, consists of the particulars set forth in the second Schedule hereunder written.

7. Save what is set forth in the second Schedule, there is not, to my knowledge, information or belief, any part of the said testator's [*or, intestate's*] personal estate now outstanding or undisposed of.

The first [*or, second*] Schedule above referred to.

(*The same as the first [*or, second*] Schedules Nos. 967, 968, substituting where applicable, "intestate's" for "testator's."*)

(*Formal parts: see No. 744.*)

976

1. I have, according to the best of my knowledge, remembrance, information and belief, set forth in the first Schedule hereunder written, the particulars of all the real estate which *G.H.*, the testator in the judgment [*or, order*] made in this cause, dated the day of , 19 , named or referred to, and who died on the day of , 19 , was seised of, or entitled to (*continue as in par. 10 of No. 966, to the end of that par.*).

Attidavit by a sole trustee of testator's will verifying his account of rents and profits, and answering the usual inquiries as to real estate.

2. Save what is set forth in the said Schedule, the said testator was not, to the best of my knowledge, information or belief, at the date of his will, or at the time of his death, seised of, or entitled to, any real estate in possession, remainder, or reversion, absolutely or contingently, or otherwise howsoever.

3. I have, according to the best of my knowledge, information and belief, set forth in the second Schedule hereunder written the particulars of all the incumbrances affecting the said testator's real estate, and what part thereof such incumbrances respectively affect [*or, to the best of my knowledge, information and belief, there is not any incumbrance affecting the said testator's real estate, or any part or parts thereof.*]

4. I have, in the account marked "A," now produced and shewn to me, according to the best of my knowledge, infor-

mation and belief, set forth a full, true and particular account of all the rents and profits of the said testator's real estate which have come to my hands, or to the hands of any person or persons by my order, or for my use; and the times when, the names of the persons from whom, on what account, in respect of what part of such estate the same have been received, and the times when the same became due; and also a like account of the disbursements, allowances, and payments made by me in respect of the said testator's real estate, or the rents and profits thereof, and the times when, the names of the persons to whom, and the purposes for which the same were made.

5. And I, speaking positively for myself, and to the best of my knowledge and belief as to other persons, further say: that save and except as appears in the said account marked "A," I have not, nor have nor has any other persons or person by my order, or for my use, possessed, received, or got in any rents or profits of the said testator's real estate, nor any money in respect thereof; and that the said account marked "A," does not contain any item of disbursement, payment, or allowance, other than such as has actually been disbursed, paid or allowed, as above stated.

The first [*or*, second—*or*,—third—*or* fourth] Schedule above referred to.

(*For schedules and account, see Nos. 967 to 972.*)

(*Formal parts: see No. 966.*)

977

Affidavit by joint executors and trustees, of non-receipt of personal estate, or rents and profits.

1. We, each speaking positively for himself, and to the best of his knowledge and belief as to other persons, say: that we have not, nor has [any or] either of us, nor have nor has any other persons or person by our [or any] or either of our order, or for our [or any] or either of our use, since the day of , 19 (the time to which our accounts thereof, marked respectively "A" and "B," verified by our affidavit filed in this cause the day of , 19 , were made up and rendered), possessed, received, or got in, any part of the personal estate of *G.H.*, the testator in the judgment [*or*, order] made in this cause, dated the day of , 19 , named or referred to, nor any money in respect thereof, nor any rents or profits of the said testator's real estate, nor any money in respect thereof.

(Formal parts: see No. 744.)

978

1. I, speaking positively for myself, and to the best of my knowledge and belief as to other persons, say: that I have not, nor have nor has any other persons or person by my order, or for my use, since the day of , 19 (the time to which my accounts thereof marked respectively "A" and "B," verified by my affidavit filed in this cause, dated the day of , 19 , were made up and rendered), possessed, received, or got in, any part of the personal estate of *G.H.*, the testator [*or*, intestate] in the judgment [*or*, order] made in this cause, dated the day of 19 , named or referred to, nor any money in respect thereof, nor any rents or profits of the said testator's real estate, nor any money in respect thereof.

Affidavit by sole executor (or administrator) and trustee of non-receipt of personal estate, or rents and profits.

(Formal parts: see No. 744.)

979

1. I believe that *T.R.*, the testator in the judgment in this cause dated the day of , 19 , named, was at the time of his death possessed of some personal estate, including certain household furniture, but I cannot, of my knowledge, information, or belief, say what were the particulars or value thereof, save and except that it appears by the probate act that the amount of the personal estate of the said testator was sworn to be under the value of \$. Save and except as aforesaid, I cannot from my knowledge, remembrance, information, or belief, set forth a full, true, and particular, or any account or inventory of the personal estate which the said testator *T.R.* was possessed of, or entitled to, at the time of his death.

Negative affidavit by the executor of a deceased executor as to the personal estate of the original testator.

2. And I, speaking positively as to myself, and to the best of my knowledge and belief as to other persons, further say: that save as aforesaid, the said *T.R.* was not at the time of his death possessed of, or entitled to, any debt or sum of money due to him from me, or from *R.S.*, deceased, in the said judgment named the executor of the said testator *T.R.*, on any account whatsoever; nor to any leasehold or other personal estate, goods, chattels, or effects, in possession or reversion, absolutely or contingently, or otherwise.

3. I cannot, from my knowledge, information, or belief, set forth a true and particular, or any account of the personal estate of the said testator *T.R.*, which came to the hands

of the said *R.S.*, or to the hands of any person or persons by his order, or for his use; or a like or any account of the disbursements, allowances, or payments made by the said *R.S.* in respect of the funeral expenses, debts, or personal estate of the said testator *T.R.*

4. And I, speaking positively as to myself, and to the best of my knowledge and belief as to other persons, further say: that no part of the personal estate of the said testator *T.R.* has come to my hands, or to the hands of any other person or persons by my order, or for my use.

5. There is not to my knowledge, information, or belief, any part of the personal estate of the said testator *T.R.* now outstanding or undisposed of.

(*Short style of cause.*)

980

Notice of having left accounts, and filed affidavit.

Take notice, that I have this day left at the chambers of the Master at the accounts of the defendant *A.B.* (*or as may be*), in answer to the directions of the said Master [*or, in the judgment or order*] dated , 19 , and filed an affidavit of the said defendant (*or as may be*) verifying the said accounts, and answering the said judgment [*or, order*].

Dated, &c.

(*Short style of cause.*)

981

Request to Taxing Master to moderate bill of costs claimed by an accounting party.

The Taxing Officer is requested to [moderate] and settle the accompanying bill of costs, identified by my initials thereon; to assist in making a proper allowance in respect thereof in taking the accounts of the defendant (*or as may be*), the executor (*or as may be*) of *A.B.*, the testator (*or as may be*) in this cause, under the judgment [*or, order*] therein dated the day of , 19 ; in which accounts the said bill of costs is claimed as a payment by the said defendant (*or as may be*) to his solicitor.

(Short style of cause.)

982

The surcharge of the plaintiff (*or as may be*) against the defendant *A.B.* (*or as may be*), under the judgment [*or, order*] in this cause, dated the day of , 19 .

Surcharge
against an ac-
counting
party.

The plaintiff (*or as may be*), seeks to charge the defendant *A.B.* (*or as may be*) with the several sums of money hereinafter particularized, beyond what the defendant *A.B.* (*or as may be*) has, by his account marked "*A*," left at the chambers of the Master at , on the day of , 19 , pursuant to the said judgment [*or, order*] admitted to have been received by him; that is to say:

(Set out particulars of the surcharge, in a short and succinct manner; as thus:)

No. of Item.	Date when received	Names of persons from whom received.	Particulars of amount received.	Amount received.
73	19—Jan. 4	John Thomas.....	Half year's rent of Bolder Farm, due—19—.....	<div style="text-align: right;">\$ c.</div> <div style="text-align: right;">300 00</div>

(Formal parts: see No. 980.)

983

Take notice, that I have this day left at the chambers of the Master at , a statement of several sums of money therein and hereinafter particularized, with which the plaintiff (*or as may be*) seeks to charge the defendant *A.B.* (*or as may be*) beyond what the said defendant (*or as may be*) has, by his account marked "*A*," left in the said chambers on the day of , 19 , admitted to have received; that is to say:

Notice there-
of.

(Set out particulars: as in the surcharge.)

And take notice, that I have this day filed an affidavit of the plaintiff (*or as may be*) in support of such statement.

SECTION III.—FORECLOSURE AND REDEMPTION ACTIONS.

Notice of Election that Defendant conduct Sale.
(Rule 383.)**984**

Notice of election that defendant conduct sale. (a)

In the High Court of Justice.

Between—A.B., Plaintiff,
and
C.D., Defendant.

Take notice that the plaintiff elects that the sale of the mortgaged premises be conducted by you instead of by the plaintiff, and you are at liberty to withdraw the deposit made by you in this cause for the purpose of such sale.

Dated, &c.

A.B.
Plaintiff's Solicitor.To , Defendant,
and C.D., his Solicitor.

Con. Rules, 1888, Form 32.

Notice to Incumbrancers. (Rule 746.)**985**

Notice to incumbrancers. (b)

In the High Court of Justice.

Between—A.B., Plaintiff,
and
C.D., Defendant.

Whereas an action has been instituted by the above-named plaintiff for the foreclosure [*or, sale*] of [*or, enforcement of*] a lien on] certain lands (*insert description of lands*), and I have been directed by the judgment made in this cause, and dated the day of , to inquire whether any person other than the plaintiff has any charge or lien, or incumbrance upon the said estate. And whereas it has been made to appear before me that you have each some lien, charge or incumbrance upon the said estate, and I have therefore caused you [each] to be made part to this action, and have appointed the day of , at o'clock in the noon, for you to appear before me, at my chambers at , either in person or by your solicitor. to prove your claims.

(a) Con. Rules, 1897, Form 76.

(b) Con. Rules, 1897, Form 77.

Now you are hereby required to take notice: 1st. That if you wish to apply to discharge my order making you a party, or to add to, vary, or set aside the judgment, you must do so within fourteen days after the service hereof; and if you fail to do so, you will be bound by the judgment, and the further proceedings in this cause as if you were originally made a party to the action. 2nd. That if you fail to attend at the time and place appointed, you will be treated as disclaiming all interest in the land in question, and it will be dealt with as if you had no claim thereon, and your claim will be in fact foreclosed.

Dated this day of , A.D. 19 .

W.L., Master.

To

Con. Rules, 1888, Form 34.

Appointment, on Reference as to Incumbrances. (Rule 748.)

In the High Court of Justice.

Between—A.B., Plaintiff,
and

C.D., Defendant.

986

Appointment
on reference as
to incum-
brances. (c)

Having been directed by the judgment in this cause, dated the day of , to inquire whether any person other than the plaintiff has any lien, charge or incumbrance, upon the lands in the pleadings mentioned, being (*insert description of lands*), I hereby appoint the day of next, at o'clock in the noon, at my chambers at , to proceed with the said inquiries.

And you are hereby required to take notice that, if you fail to attend at the time and place appointed, the reference may be proceeded with in your absence, and you will be treated as disclaiming all interest in the land in question, and it will be dealt with as if you had no claim thereon, and your claim will be in fact foreclosed.

Dated this day of , 19 .

W.L., Master.

Con. Rules, 1888, Form 35.

987

Affidavit by a mortgagee not in possession, of amount due to him under a decree in a foreclosure or redemption suit.

(Formal parts: see No. 744.)

1. There is due to me under and by virtue of my mortgage security dated the day of , 19 , in the judgment made in this cause dated the day of , 19 , mentioned (*or as may be*), the sum of \$ for principal money, and the sum of \$ for interest thereon, computed at the rate of \$ per cent. per annum, from the day of , 19 , to the day of , 19 ; making together the sum of \$; exclusive of my costs of this action (*or as may be*)—*Shew consideration fully, as in No. 940.*)

2. And I, speaking positively for myself, and to the best of my knowledge and belief as to other persons, lastly say, that I have not, nor hath nor have any other person or persons by my order, or for my use, received any sum or sums of money for or on account of the hereditaments comprised in my said mortgage security, or any part thereof; nor any security or satisfaction whatsoever for the said principal money, and interest respectively: save and except the said mortgage security (*or as may be*).

3. I further say that I am not now and since the date of the said mortgage never have been, nor hath nor have any other person or persons by my order or to my knowledge or belief for my use been in the occupation of the said mortgaged premises or any part thereof or in the receipt of the rents and profits of the same or of any part thereof.

(Formal parts: see No. 744.)

988

Another form.

I, , of the of , in the County of , make oath and say:

1. Under and by virtue of an indenture bearing date the day of , one thousand nine hundred and , and made between , I am mortgagee of the lands and premises therein comprised for securing payment of the sum of together with interest thereon.

2. I have not, nor hath, nor have any other person or persons, by my order, or to my knowledge or belief, for my use, received the said principal sum of , or any part thereof, or the interest which accrued due thereon since the day of , one thousand nine hundred

and _____, or any part thereof, or any security or satisfaction for the same respectively, or any part thereof save and except the said mortgage.

3. The whole of the said sum of _____ together with interest thereon from the said _____ day of _____, one thousand nine hundred and _____ still remains justly due and owing to me under and by virtue of the said mortgage.

4 The whole of the said sum of _____ was actually advanced by me to the defendant upon the security of the said mortgage.

5. I am not now, and never have been since the date of the said mortgage, nor hath, nor have any person or persons by my order, or, to my knowledge or belief, for my use, been in the occupation of the said mortgaged premises or of any part thereof, nor in receipt of the rents, issues or profits of the same or any part thereof.

(Formal parts: see No. 744.)

Proceed as in form No. 987 to end of par. 1.

989

2. I have, in the [first part of the (a)] account now produced and shewn to me marked "A," set forth a full, true, and particular account of all sums of money which have become due to me for principal money and interest under and by virtue of my mortgage security dated the _____ day of _____, 19____, in the said judgment mentioned.

Affidavit by a mortgagee in possession, verifying his account of principal and interest, repairs, and rents, without rests.

3. I have, in [the second part of (a)] the said account, set forth a full, true, and particular account of all sums of money paid, laid out, and expended by me in necessary repairs and lasting improvements on the hereditaments comprised in my said mortgage security, and the times when, the names of the persons to whom, and the purposes for which the same were made.

4. I have, in [the third part of (a)] the said account set forth a full, true, and particular account of all the rents and profits of the said mortgaged hereditaments which have

(a) These words should be left out if the account is made out in the form No. 991.

SECOND PART.—*Expenditure in Repairs and Lasting Improvements.*

No. of Item.	Date when paid or allowed.	Names of persons to whom paid or allowed.	For what purpose paid or allowed.	Amount paid or allowed.	Interest thereon at \$5 per cent., computed to 8th Sept. 19—.
1	19— Nov. 4	Thomas Carpenter	New barn at farm occupied by John James	\$ c. 190 11	\$ c. 7 20
2	19— March 3	William Styles ...	Rebuilding part of house let to Reuben Marshall	140 60	2 90
			Interest		
			Total laid out in repairs, &c.	330 71	10 10
			Add interest	10 10	
			Total of Second Part.	340 81	

THIRD PART.—*Rents and Profits.*

RECEIPTS.

DISBURSEMENTS.

No. of Item.	Date when received.	Names of persons from whom received.	On what account, and in respect of what part of the estate received and when due.	Amount received.	No. of Item.	Date when paid or allowed.	Names of persons to whom paid or allowed.	For what purpose paid or allowed.	Amount paid or allowed.
1	19— Nov. 11.	John James	Half y'r's rent of farm in Melancthon, due September last	\$ c. 296 00	1	19— Jan. 1	I. Thompson	One year's rent charge, due December last	\$ c. 15 00
2	" 25.	Thos. Jones.	One quarter's rent of house at Chesterford, due same time ..	10 00	2	" 16	James Francis	Taxes due ditto	6 00
3	May 1..	John James	Same as No. 1, due March last	296 00	3	19— Jan. 5	I. Thompson	Same as No. 1, due December last	15 00
4	June 3..	Thos. Jones.	Same as No. 2, due March last	10 00				Balance ...	576 00
				612 00					612 00

(Short style of cause.)

991Another form
account. (a)

This is Account "A," referred to in the affidavit of the
plaintiff A.B., sworn before me this day of , &c.

(Signed)

C.D.,

A Commissioner, &c.

19	, Aug. 8..	Amount of Principal money ad- vanced this day	\$2,000 00
19	, Nov. 11..	Interest to date, @ 5% per an- num	351 70
			<hr/> 2,351 70
19	, Nov. 11..	Rent received from H. Brown....	380 00
			<hr/> \$1,971 70
19	, Aug. 8..	Interest to date, @ 5%	
		per annum	\$ 146 25
"	"	..Paid Thomas Carpenter for new barn on farm occupied by H. Brown.....	200 00
			<hr/> 2,171 70
19	, Aug. 8..	Interest on \$2,171.70 to date, @ 5% per annum	217 17
			<hr/> 363 42
			<hr/> \$2,535 12
"	"	..Rent received from H. Brown...	380 00
"	"	..Principal due this day.....	\$2,155 12

(a) This account is made out in accordance with the principle laid down by the Court of Queen's Bench in *McGregor v. Gaulin*, 4 U. C. R. 378, followed in *Bettes v. Farewell*, 1 C. P. 450. The account No. 990, would be open to objection if the payments should happen to exceed the amount due for interest at the time the payments were received—as in that case the plaintiff would be claiming interest on the full amount of the principal after it had been reduced by payment on account; and, on the other hand, in many cases, it would be unjust to the plaintiff to allow the defendant interest on his payments. The effect of such a mode of computation is very forcibly illustrated in *McGregor v. Gaulin*, *supra*. In this account, it will be seen, the interest is calculated up to the date of each payment, and the payment is then applied first in satisfaction of such interest, and the balance, if any, to the reduction of the principal. In preparing the account caution must be used in computing interest only on principal money.

	<i>Brought forward</i>	\$2,155 12
19 , Feb. 8 ..	Interest @ 5% to date.	157 75
" " ..	Rent received from H. Brown	95 00
		<hr/> 62 75
19 , Aug. 8..	Interest on \$2,155 to date @ 5%	157 75
		<hr/> 220 50
" " ..	Balance of Principal and Interest due this day	\$2,375 62

(See Nos. 940, *et seq.*)

(Formal parts: see No. 744.)

992

Affidavit of subsequent incumbrancer proving claim.

993

Affidavit of execution creditor proving claim.

The defendant *C.D.* is justly and truly indebted to me in the sum of \$ (proceed as in form No. 939 to the end of par. 3).

4. On the day of I caused to be placed in the hands of the Sheriff of the County of , a writ of execution against the lands of the said defendant *C.D.* to recover the amount due to me, under the said judgment and the said writ is still in the said Sheriff's hands to be executed, in full force and unsatisfied.

SECTION IV.—PARTNERSHIP ACTION.

(Formal parts: see No. 744.)

994

1. In consequence of instructions received by me from Messrs. A. and B., the solicitors in this cause for the plaintiff (or as may be), I have carefully examined all the books and accounts of the plaintiff and defendant as co-partners in the business or trade of cotton spinners and manufacturers at R., in the county of L., from the day of , 19 , when the said partnership commenced, until the day of , 19 , when the said partnership was dissolved.

2. I have, in the book marked "A," now produced and shewn to me, set out the particulars and results of my investigation aforesaid, and the accounts of all the dealings and

transactions between the plaintiff and defendant in the said business of cotton spinners and manufacturers directed to be taken by the judgment in this cause, dated the day of , 19 .

3. To the best of my knowledge, information, and belief, the said book marked "A," contains a true and accurate account of all the said dealings and transactions, and of the result of my said investigation of the said partnership books and accounts.

(Title, and introduction: see No. 1030.)

995

Master's report of the result of partnership accounts.

1. I have taken an account of the partnership dealings and transactions between the plaintiff and defendant, from the 12th March, 19 ; having regard to the partnership articles, and the agreement of dissolution, in the pleadings mentioned.

2. On such account there was due from the said partnership to the plaintiff, on the 25th December, 19 , being the date of the dissolution of the said partnership the sum of \$830 in respect of his capital in the said partnership; and which sum of \$830 is still due to the plaintiff, together with \$105 for interest thereon at the rate of \$5 per cent. per annum from the last mentioned day to the date of this certificate; making together \$935.

3. On the same account there was due from the said partnership to the defendant on the said 25th December, 19 , the sum of \$4,124 in respect of his capital in the said partnership; and the account of the defendant has been debited with \$1,137 in respect of the trade stock of the partnership, and the horses, carts, trucks, and other plant and fixtures belonging to the said partnership, taken by him pursuant to the said agreement of dissolution; whereby the said \$4,124 has been reduced to \$2,987; which sum of \$2,987 is still due to the defendant, together with \$379 for interest thereon at the rate aforesaid from the said 25th December, 19 , to the date of this certificate: making together \$3,366.

4. The defendant has, since the dissolution of the said partnership, received in respect of the assets of the said partnership, other than the said \$1,137 with which his account has been debited as aforesaid, sums to the amount of \$4,687; and he has paid, or is entitled to be allowed, on account thereof, sums to the amount of \$3,139; leaving a balance due from him of \$1,548 on that account.

5. The particulars of the above receipts and payments appear in the "Realization Account," at page 2 of the account marked "A," verified by the affidavit of the defendant filed the 5th May, 19 , and which account is filed in my office; except, that in addition to the sums appearing in such account to have been realized by the defendant, he has been charged with \$557 received by him from A.B., in respects of the assets of the said partnership since the said 5th May, 19 ; and except that I have not allowed the defendant the sum of \$1,000 retained by him on the 28th February, 19 , on account of his capital in the said partnership; reserving to the Court the application of the partnership assets realized by the defendant since the dissolution of the said partnership, and except that I have deducted from the item of \$49 on the debit side of the said "Realization Account," the sum of \$22, whereby the said item is reduced to \$27; and except that, in addition to the disbursements appearing in the said "Realization Account," the defendant has been allowed \$400 paid by him into Court, to the credit of this cause, on the 28th February, 19 , pursuant to the said judgment.

6. Notwithstanding the foregoing certificate of the result of the said account, the question whether the account of the defendant ought to have been debited with the said \$1,137 is, at the request of the plaintiff, reserved for the consideration of the Court. (a)

Reservation of question for the Court.

7. The assets of the said partnership now remaining outstanding or undisposed of consist of, the particulars set forth in the Schedule hereto.

All of which I do humbly certify and submit to this Honourable Court.

SECTION V.—RECEIVER.

Appointment of Receiver. (Rule 763.)

In the High Court of Justice.

(Style of cause or matter.)

(Date)

I hereby appoint *(receiver's name)* receiver in this action.

(Signature of Master.)

(a) See Rule 651.

(b) Con. Rules, 1897, Form 87.

SECTION VI.—SALES.

(Short style of cause.)

997

Consent of an
incumbrancer,
or dowress, to
estate being
sold, free from
his incum-
brance or her
dower.

I, the undersigned *C.D.*, of (*residence and addition*), do hereby consent that the real estate of *A.B.*, the testator in the judgment [*or, order*] in this cause, dated the day of , 19 , named (*or as may be*), shall be sold, with the approbation of the Master at , under the provisions of the said judgment [*or, order*], free from my mortgage thereon, for the sum of \$500 and interest, created by an indenture dated the day of , 19 , [*or, free from my dower; and I agree to accept—a sum in gross to be settled by the said Master, or, the income of one-third of the purchase money during my life—in lieu of my said dower.*] And I agree to join in such sale of the said estate, and in the conveyance thereof to the purchaser; and to produce, whenever required, for the purpose of such sale, such of the title deeds and writings relating to the said estate as are in my possession or power.

Dated this day of , 19 .

Witness to the signature
of the said *C.D.*,

C.D.

G.H., of (*residence and addition*).

(Short style of cause.)

998

Advertise-
ment of sale.

Pursuant to the judgment and final order for sale made in this cause, and bearing date respectively the day of , and the day of , A.D. 19 , there will be sold, with the approbation of , Esquire, Master of this Court, at , by , auctioneer, at his auction rooms in the Town of [*or, at the hotel, in the Town of , as the case may be*], at the hour of , on the day of , the following lands and premises, in one parcel, [*or, in parcels*]. *Describe property in a clear and concise manner, and give such a fair description of the same as the owner would. If more than one parcel, describe each parcel separately, numbering them 1, 2, &c.*

If so: the property will be put up at the upset price of \$ [*or, parcel 1 will be put up at an upset price of \$, parcel 2 will be put up at an upset price of \$, &c.* *or,*

The property will be offered for sale subject to a reserved bid (on each of the said parcels), which has been fixed by the said Master]. (*Insert terms of payment, stating how much is to be paid in cash; when the balance is to be paid; and whether in cash or to be secured by mortgage, and at what rate of interest. State fully every condition varying from, or in addition to, the standing conditions of sale.*)

In all other respects the terms and conditions of sale will be the standing conditions of the High Court of Justice for Ontario.

Further particulars can be had from .

Dated at this day of , A.D. 19 .

A.B., Master.

999

A.B. } I direct that the advertisement be pub- Master's direc-
v. } lished once a week (*or as may be found* tions as to
C.D. } *beneficial and proper*) in the news- publication of
1st Jan., 19 } paper for the [four] weeks immediately advertise-
preceding the sale; that posters be put up ment.
in conspicuous places in the Town of ; that be put
up in the immediate neighbourhood of the property, and
in the Village of (*making such directions as to publicity
as a prudent owner desiring to sell his property to the best
advantage would wish*). And I fix the auctioneer's fees at
not more than \$.

(*Formal parts: see No. 744.*)

1000

1. That I am well acquainted with lot No. , in the Affidavit veri-
concession of the Township of , in the County of fying the des-
being the premises ordered to be sold in this cause. cription of the
property, as
set out in the
advertisement.

2. That the said lot consists of two hundred acres of land, of which one hundred acres are cleared, and the remainder is well timbered with beech and maple; the land cleared is of a light loam, in a good state of cultivation (*give full particulars as to character of soil, &c.*)

3. The said lot is situate about seventeen miles from the Town of , readily accessible thereto by good roads, which said Town of offers a good market for the sale of produce.

4. The said lot, in addition to being well timbered, is also well watered, and has erected thereon farm buildings consisting of (*fully describe them, saying whether of brick or wood, and how long erected*).

5. There is a good orchard, consisting of acres of land, well stocked with excellent fruit trees.

6. The lot is well fenced.

7. There is a prior mortgage on the property (*if so*) for the sum of dollars, payable to (*state particulars*).

8. The lot is now in the occupation of (*state particulars of tenancy*).

1001

Affidavit as to the mode of lotting.

(*Formal parts: see No. 744.*)

1. I have for years last past been engaged in the business of an auctioneer and land and estate agent; and for years last past I have carried on such business at aforesaid; and I have had considerable experience in the mode of lotting and selling land and house property.

2. I know and am well acquainted with the estates situate at , in the County of , proposed to be sold in this cause, and described in the paper writing marked A., now produced and shewn to me.

3. On the day of , 19 , I went over the said estates, and made a careful survey thereof, for the purpose of forming an opinion as to the best mode of dividing and allotting the said estates for the said sale thereof.

4. The said paper writing marked A. sets forth a true and correct description of the said estates, to the best of my knowledge and belief, and the mode in which, in my judgment and opinion, it will be desirable to lot and divide the same for the purposes of the said sale.

5. In my judgment and belief the said estates will be sold to the most advantage, and will be likely to realize the best prices, if the scheme of division and allotment set forth in the said paper writing marked A. be adopted.

1002

Affidavit of fitness of proposed auctioneer, and as to time and place of sale.

(*Formal parts: see No. 744.*)

1. I have for years last past known and been well acquainted with *L.M.*, of (*residence and addition*), auctioneer and land and estate agent; and during all that time the said *L.M.* has carried on business as an auctioneer and land and estate agent at aforesaid (*or as may be*).

2. I have on several occasions employed the said *L.M.*, as an auctioneer and land valuer; and am also acquainted with several persons who are in the habit of employing him in that capacity; and he has invariably given entire satisfaction to me, and I believe also to such other persons.

3. The said *L.M.* is a person of respectability and integrity, and of considerable ability as an auctioneer and land and estate agent; and in my judgment he is a fit and proper person to be employed to sell the estates situate at , in the County of , proposed to be sold in this cause [or matter].

4. That the hotel, in the Village of , is the place where auction sales of lands are most usually held in the said village, and I believe that it is the best and most convenient place at which to offer the lands in question in this cause for sale; and I further say that day is the most usual day in the week for holding such sales at the said village.

(*Formal parts: see No. 744.*)

1003

1. I have carefully examined and surveyed the estates particularly described in the printed particulars of sale marked A., now produced and shewn to me, in order to form an opinion as to the value thereof, and the amounts which the said estates ought to realize on the sale thereof advertised to take place on the day of , 19 .

Affidavit as to
the amount to
be fixed for
the reserved
bidding.

2. I have, in the paper writing marked B., now produced and shewn to me, set forth in the first column the number of the lots into which the said estates have been divided for the purposes of the said sale; and in the second column, opposite the numbers of the said lots respectively, the full values of the said lots respectively; and in the third column opposite the said numbers respectively, the amounts which, in my judgment and belief, should be fixed as the reserved biddings for the said lots respectively on the said sale.

B.

*(Short style of cause.)***1003a**Valuation (B)
referred to in
No.This paper writing marked B. was produced and shewn to L.M., and is (*proceed as in heading of No. 990*).

No. of Lot.	Value.	Proposed reserved bidding.
1	\$ 2,000	\$ 1,850
2	500	450

L.M.

*(Formal parts: see No. 403.)***1004**

Notice of motion for leave to bid at the sale.

on the part of the plaintiff [*or, of the defendant—or other party having conduct of sale*], that he may be at liberty to bid at the sale directed by the judgment [*or, order*] dated the day of , 19 , of the estates therein mentioned. And take notice (*as in No. 403*).

*Standing Conditions of Sale. (Rule 723.)***1005**

Conditions of sale. (a)

1. No person shall advance less than \$10 at any bidding under \$500, nor less than \$20 at any bidding over \$500, and no person shall retract his bidding.

2. The highest bidder shall be the purchaser; and if any dispute arise as to the last or highest bidder, the property shall be put up at a former bidding.

3. The parties to the action, with the exception of the vendor (and naming any parties, trustees, agents, or others, in a fiduciary situation), shall be at liberty to bid.

4. The purchaser shall, at the time of sale, pay down a deposit, in proportion of \$10 for every \$100 of the purchase money, (b) to the vendor, or his solicitor; and shall pay the remainder of the purchase money, on the day of next; and upon such payment the purchaser shall be entitled

(a) Con. Rules, 1897, Form 85.

(b) State with or without interest, as may be.

to the conveyance, and to be let into possession; the purchaser at the time of sale to sign an agreement for the completion of the purchase.

5. The purchaser shall have the conveyance prepared at his own expense, and tender the same for execution.

6. If the purchaser fails to comply with the conditions aforesaid, or any of them, the deposit and all other payments made thereon, shall be forfeited, and the premises may be resold; and the deficiency, if any, by such re-sale, together with all charges attending the same, or occasioned by the defaulter, are to be made good by the defaulter.

Con. Rules, 1888, Form 43.

Mr. *L.M.*, the person appointed to sell the estates advertised for sale in this cause [*or, matter*], is requested to attend to the following directions:

1006

Directions to auctioneer as to the conduct of a sale in several lots, where there are reserved biddings.

R.M., Master.

The sale is to be conducted in accordance with the accompanying printed particulars and conditions. This [print] is to be carefully preserved, and returned to my chambers: with the affidavit of the result of the sale.

The sale is to be subject to the reserved bidding specified in the accompanying note. This note is not to be opened till the close of biddings at the sale. The reserved bids are not to be divulged to any person, either at, or at any time after, the sale.

In case there is no bidding for any lot equal to, or higher than, the reserved bid, the person appointed to sell is to declare that such lot is not sold, but has been bought in on account of the persons interested in, or entitled to, the property.

The accompanying bidding-paper is to be carefully filled up. The highest sum bid, whether the lot is sold or not, is to be inserted in the second column. In the event of no person bidding for any lot, the words "no bidding" are to be written in the second column, opposite the number of such lot. When, although there is a bidding, the lot is not sold, the words "not sold" are to be written in the third column. The purchasers are to sign their names to the contract at the foot of the printed conditions of sale, and any person who purchases as agent for another must so sign:

otherwise he must be treated as the purchaser. The purchaser's address and quality are to be fully stated at the foot of the contract.

When the purchaser's signature is not plain, or initials are used, a note must be put at the foot of the contract, as follows: "The name of the purchaser of lot is ."

(Short style of cause.)

1007

Note of the reserved biddings.

The reserved biddings fixed by the Master at , to which the sale in this cause [*or, matter*] is to be subject, are as follows, viz.:

For Lot 1	\$800	
For Lot 2	\$250	

(Short style of cause.)

1008

Bidding Paper.

Bidding paper of lands sold in this cause on the day of, &c.

For Lot 1	\$900	
For Lot 2	\$200	Not sold.
For Lot 3	No bidding.	
For Lot 4	\$710	

(*Short style of cause.*)

Set out the Conditions of Sale as in No. 1005, to clause 6 inclusive; then add as follows:

1009

Conditions of sale, and contract by purchaser.

I agree to purchase the property [or lot] mentioned in the annexed particulars for the sum of , and upon the terms set forth in the above conditions.

Dated this day of , A.D. 19 .

(*Name and address of purchaser.*)

Witness:

Affidavit of Auctioneer as to Result of Sale. (Rule 730.)

In the High Court of Justice.

Between—A.B., Plaintiff,
and
C.D., Defendant.

1010

Affidavit of auctioneer. (a)

I, E.F., of , in the County of , the auctioneer appointed by the Master of the Supreme Court of Judicature at , to sell the lands and premises comprised in the particulars hereinafter referred to, make oath and say as follows:

1. I did, according to the appointment of the said Master, at the time and place, in the lots and subject to the conditions specified in the particulars and conditions of sale hereunto annexed, marked respectively A., B., C., &c., offer for sale by public auction the lands and premises described in the said particulars, and the results of such sale are as appear from the several signed contracts appearing at the end of the said conditions of sale, marked respectively, B., C., &c.

2. The sums set forth in the said several contracts are the highest sums bid for the respective lots therein respectively mentioned, and of , and of , being the persons whose names are respectively subscribed to the said several contracts, were respectively declared by me to be the highest bidders for, and became the purchasers of, the lots respectively mentioned in the said several contracts, at the price or sums of and respectively, being the price or sums in the said several contracts respectively mentioned.

3. The several lots numbered respectively 1, 2, &c., in the said particulars were not sold, no person having bid a sum

higher than or equal to the reserved biddings fixed for the same respectively by the said Master. The highest sums bid for such last-mentioned lots were those appearing opposite the numbers of such lots respectively in the second column of the paper now shewn to me and marked E.

4. No person bid any sum whatever for the lots numbered 4 and 5, respectively, in the said particulars.

5. The said sale was conducted by me in a fair, open and proper manner, and according to the best of my skill and judgment.

1011

Affidavit of
insertion of
advertisements
and
publication of
posters.

(*Formal parts: see No. 744.*)

1. A true copy of the advertisement now produced and shewn to me, marked A., was published in the issues of the newspaper published at on the days of , and the day of , being once in each week for the four weeks immediately preceding the day of , being the day of the sale in this cause, (*or as the case may be*).

2. I have examined copies of the said newspaper published on each of the said days.

3. On the day of I posted up fifty copies of the posters now shewn to me, marked B., in conspicuous places, in different parts of the Township (*Town or City*) of , and the adjacent country and villages (*or as the case may be*).

4. I also posted up twenty-five of the said bills or posters during the fourth week immediately preceding the said sale in conspicuous places in taverns adjacent to the said land, and fifty others of the said bills and posters I also during the third week preceding the said sale, posted up in conspicuous public places in different part of the said Township [*Town or City*] of , and the adjacent country and villages (*or as the case may be*), and twenty-five others of the said bills or posters I distributed to the auctioneer and the solicitors of the various parties interested in this cause.

(*Formal parts: see No. 744.*)

1012

Affidavit of
execution of
contract by
purchaser.

1. The annexed contract of sale, attached to the conditions and advertisement of sale in this cause, and marked A., was signed in my presence by *B.C.*, of the Township of , in the County of , yeoman [*if signed by an agent, say by D.E., as agent for B.C., of, &c.*]; that the signature "*B.C.*" (*or as the case may be*), set and subscribed to the said con-

tract, is the proper handwriting of the said "B.C.," and that the signature "F.G.," set and subscribed as a witness thereto, is my own proper handwriting.

Report on Sale. (Rule 731.)

In the High Court of Justice.

Between—A.B., Plaintiff,
and

C.D., Defendant.

1013
Report on
sale. (a)

Pursuant to the judgment [*or, order*] of this Honourable Court, bearing date the day of , and made in this cause, I have, under the Rules of the Supreme Court of Judicature, in the presence of [*or, after notice to*] all parties concerned, settled an advertisement and particulars and conditions of sale, for the sale of the lands mentioned or referred to in the said judgment [*or, order*], and such advertisement having according to my directions been published in the (*naming the newspaper or newspapers*), once in each week for the weeks immediately preceding the said sale (*or as the case may be*), and bills of the said sale having been also, as directed by me, published in different parts of the Township [*Town or City*] of , and the adjacent County and Villages (*or as the case may be*), the said lands were offered for sale by public auction, according to my appointment, on the day of , by me [*or, by Mr.* * of , appointed by me for that purpose, auctioneer], and such sale was conducted in a fair, open and proper manner, when , of , was declared the highest bidder for, and became the purchaser of the same, at the price or sum of \$, payable as follows (*set out shortly the conditions of sale as to payment of the purchase money.*)

All which having been proved to my satisfaction by proper and sufficient evidence, I humbly certify to this Honourable Court.

Dated

Con. Rules, 1888, Form 44.

*Or where the sale has proved abortive proceed as above down to the** no bids were made for the said property [*or no bids were made equal to or greater than the amount of the reserved bid*] by reason whereof the said sale proved abortive. Abortive sale.

(a) Con. Rules, 1897, Form 86.

*(Short style of cause.)***1014**Demand of
abstract of
title (a).

I hereby require you forthwith to furnish me with an abstract of title to [lot 15 in the 1st con. of York], being the lands purchased by Mr. *C.D.*, at the sale in this cause, on the day of instant.

Dated, &c.

Yours, &c.,

A.B.,Solicitor for *C.D.*To Messrs. *A. & B.*,

Solicitors for

*(party having conduct of sale.)**(Short style of cause.)***1015**Abstract of
title.

Abstract of title of (*vendors*) to lot 15 in the 1st con. of York, being the parcel of land purchased by Mr. *C.D.*, at the sale in this cause, on the day of , &c.

Patent.

5 Jan., By a grant from the King to *A.D.*, of , yeoman:
1835. in consideration of £100 the King did give and grant unto the sd *A.D.*, his heirs and assns, all and singr lot 15 in the 1st con. of the Tp. of York, in the County of York.

To HOLD the same to the said *A.D.*, his heirs and assns forever.

SAVING and reservg to the King, his heirs and successors, all white pine trees then or thereafter growing on sd lands.

PROVISO: that no part of sd land shd be within and reservn theretofore made for the King, his heirs or successors, by the Surveyor-General.

PROVISO: for performance of settlement duties by sd *A.D.*

PROVISO: that *A.D.* shd take oath of allegiance.

Executed by Sir Jno. Colborne, Lieutenant-Governor of Upper Canada.

Will.

6 March, THE sd *A.D.*, by his will of this date, after dir-
1836. ecting his debts and funeral expenses to be paid, gave and bequeathed

All the rest, residue and remainder of his est,
both real and personal, of what nature and kind
soever,

UNTO *C.D.*, his heirs and assns, forever. (*b*)

EXECUTED by testator, and attested by John
Black, Thomas Reid and Mary Ward.

PROVED 5th June, 1840, in the Surrogate Court
of the County of . Registered 25th July, 1840.

14 May, The testator, *A.D.*, died.
1840.

Death of tes-
tator.

7 July, 1841. INDRE OF BARGAIN AND SALE BETWEEN *C.D.*, &c.,
of the 1st pt., *M.D.*, his wife, of the 2nd pt., and
R.P., of , gentleman, of the 3rd pt. Deed of B. &
S.

RECITING the before abstracted will of sd *A.D.*

IT IS WITNESSED that *C.D.*, in consn of \$, did
bargain and sell unto the sd *R.P.*, his heirs and
assns,

ALL the before described premises,

To HOLD the same to the sd *R.P.*, his heirs and
assns forever.

COVENANT by the said *C.D.*, that he had a right
to convey, for quiet enjoyment, against incum-
brances, and for further assuree.

IT IS ALSO WITNESSED the said *M.D.* barred her
dower in the said premises.

EXECUTED by said *C.D.*, and *M.D.*, and attested,
and

REGISTERED 17 July, 1841.

8 Jan., 1844. INDENTURE OF MORTGAGE between *R.P.*, of , Mortgage.
gentleman, of the 1st pt, *A.P.*, his wife, of the 2nd
pt, and *R.F.*, of &c., farmer, of the 3rd pt.

RECITING the before abstracted deed of 7 July,
1841.

(*b*) Unless the will be long an extract of the whole should be
furnished, but where the length renders this inconvenient, extract the
material parts in the precise words of the testator, which is better than
attempting a statement of the effect, the correctness of which often
depends upon the right application of very difficult rules of construc-
tion. A codicil should be abstracted in connection with the will to
which it is annexed, but where anything took place in the interval
between the making of the will and codicil, the latter should be again
referred to in the order of its date.

IT IS WITNESSED that in consn of £150 the sd *R.P.* did grant unto the sd *R.F.*, his heirs and assns,

ALL the before abstracted premises,

To HOLD unto the sd *R.F.*, his heirs and assns. forever.

PROVISO for redemption, on payment of principal and int.

COVENANTS for payt of prinl and int, and for title, &c.

IT IS ALSO WITNESSED that sd *A.P.* thereby barred her dower in sd. prems.

EXECUTED by said *R.P.* and *A.P.*, and attested.

REGISTERED 10 Jan., 1844.

Deed poll. 9 June,
1845.

DEED POLL indorsed on last abstracted indre. RECITING that within mentd principal sum was owing with £10 for intr thereon.

THE SD *R.F.*, IN CONSN of £160 paid by *W.B.*, of , farmer, did bgn, sell, assn, transfer and set over unto sd *W.B.*, his heirs, exors, admors and assns,

THE SD INDRE OF MORTGAGE, and

THE afsd prems, principl and int.,

AND all his estate, &c.

To HOLD unto sd *W.B.*, his heirs, exors, admors and assns. for ever.

SUBJECT to right of redemption by sd *R.P.*

COVENANT by sd *R.F.* that he had done no act to incumber.

EXECUTED and attested.

Certificate of
discharge of
mortgage. 11 Feb.,
1846.

Certificate whereby *W.B.*, of , did certify that *R.P.*, of , gentleman, had paid and satisfied all money due or to grow due on the mortgage made by him the sd *R.P.* to *R.F.*, of , farmer, dated 8 January, 1844, and assigned by the said *R.F.* to the said *W.B.* by deed dated 9 June, 1845, and which said mtge is therein stated to have been registered in the Registry Office of the County of York, at ten minutes past one of the clock in the afternoon of the 10 Jan., 1844.

ATTESTED by two witnesses.

REGISTERED 11 Feb., 1846.

12 March, *R.P.*, of _____, gentleman, died intestate, Death of
 1847. leaving him surviving *R.C.P.*, his eldest son and grantee intes-
 heir-at-law (a). tate.

15 April, INDRE OF MORTGGE made betn *R.C.P.*, of _____ Mortgage.
 1858. yeoman, of the 1st part, and *L.M.*, of _____, mer-
 chant, of the 2nd part.

WHEREBY, in consn of £100, the sd *R.C.P.* did
 grant unto the sd *L.M.*, his heirs and assns,

ALL the before described premises.

SUBJECT to a proviso for redemptn on paymt of
 principal and int.

EXECUTED by both parties and attested.

REGISTERED 15 Apl., 1858.

2 June, MORTGAGE made betn *R.C.P.*, of _____, yeoman, Mortgage of
 1860. of the 1st pt, *M.P.*, his wife, of the 2nd pt, and equity of
V.B., of _____, saddler, of the 3rd pt. redemption.

WHEREBY in consn of \$ _____, the sd *R.C.P.*
 did grant unto the sd *V.B.*, his heirs and assns, the
 E. $\frac{1}{2}$ of said lot No. 15.

PROVISO for redempt on paymt of \$ _____ and intr.

5 Nov. The said *R.C.P.* died intestate, leaving him sur- Death of
 1894. viving his widow *M.P.* and *A.P.*, *R.W.P.* and *G.P.*, mortgagor
 his sole heirs and heiresses-at-law. intestate.

20 Dec., LETTERS OF ADMINISTRATION to the estate of the Letters of
 1894. said *R.C.P.*, administra-
 tion.

Whereby administn of the sd estate was com-
 mitted unto the sd *M.P.* as sole administratrix by
 the Surrogate Court of _____

5 Oct., JUDGMENT OF THE High Court of Justice made Decree for
 1900. in a certain action wherein *L.M.* is plaintiff. sale.
 and

M.P., *A.P.*, *R.W.P.* and *G.P.*, defendants

Whereby it was ordered and adjudged that all
 necessary inquiries be made, acts taken, costs taxed,
 and proceedings had for redemption or sale of the
 land in question in the sd action being the sd lot,
 and for these purposes the said action was thereby
 referred to the Master of the sd Court at _____

(a) Where the alleged heir-at-law is a more remote connection of
 the intestate, it is advisable to set out the pedigree showing his rela-
 tionship.

Final order. 10 June, FINAL ORDER made by sd Court in said action, 1901. *V.B.* having been added as a pty deft thereto in the Master's office:

WHEREBY it was ordered that the lands in qn in the sd action shd be sold as by the sd judgment directed.

Dated, &c.

*A. & B.,
Solicitors for vendors.*

(*See next Form.*)

(*Short style of cause.*)

1016

Notice to be indorsed upon the abstract delivered.

Take notice, that if you have any objection to make to the sufficiency of the within abstract, you must serve the same in writing within seven days from the service hereof upon you, and if no such objection be served within the time above-named, you will be deemed to have accepted the said abstract as sufficient.

Dated, &c.

A. & B.,

To Mr. *A.B.*,

Solicitors for Vendors.

Solicitor for Mr. C.D.

(*Short style of cause.*)

1017

Objections as to sufficiency of abstract.

Objections to the sufficiency of the abstract of title to lot , in the concession of , purchased by Mr. *C.D.* at the sale in this cause.

1. It is not shewn by the abstract that *A.D.* ever acquired title to the said lot.

2. It does not appear by the abstract that the will of *C.D.* was sufficiently executed to pass real estate in this Province.

3. Upon searching the Registry Office, I find that *R.P.* executed a mortgage to one *N.F.*, dated 5th July, 1842, which mortgage appears afterwards to have been assigned by deed to one *R.L.* This mortgage and assignment do not appear upon the abstract, neither is it shewn how the interest of *R.L.* is bound by the judgment under which the sale to *C.D.* took place.

4. It does not appear by the abstract that *J.D.* died intestate as to the land in question.

5. The deed from *M.W.* to *A.F.*, dated 15th January, 1865, is not sufficiently abstracted.

Dated, &c.

A.B.,

To Messrs. *A. & B.*,
Solicitors for Vendors.

Solicitor for Mr. C.D.

(*See next form.*)

(*Short style of cause.*)

Take notice, that you are hereby required to answer the within objections within fourteen days from the service thereof. And take notice, that in case you make default in answering the said objections within the said time, or in case the answers (if any) made by you shall be unsatisfactory, I shall apply to the Master of this Court [at] for a warrant to consider the abstract delivered to me as solicitor for *Mr. C.D.* herein.

1018
Notice to be
indorsed.

Dated, &c.

A.B.,

To Messrs. *A. & B.*,
Vendors' Solicitors.

Solicitor for Mr. C.D.

(*Short style of cause.*)

Answers to objections to the sufficiency of the abstract of title to lot , in the concession of York.

1019
Answers to
objections to
the sufficiency
of abstract.

1. In answer to objections 1, 3 and 4, we deliver herewith a supplemental abstract.

2. In answer to objection 2, we admit that the will of *C.D.* was insufficiently executed to pass real estate; but the deed from *C.D.* to *R.F.*, the devisee named in the said will, dated , is made by the heir-at-law of *C.D.*, as appears by the abstract delivered.

3. In answer to objection 5, we say that the deed from *M.W.* to *A.F.* is lost, and we are unable to give any further abstract of that deed, and we submit that the abstract furnished is sufficient.

Dated, &c.

A. & B.,

To *A.B.*, Esq.
Solicitor for Mr. C.D.

Vendors' Solicitors.

1020

Supplemental
abstract of
title.

The supplemental abstract should be in the same form and indorsed with the same notice as No. 1015 (see No. 1016), except that in the heading it should be styled "Supplemental Abstract of Title, &c."

1021

Certificate
of Master of
sufficiency of
abstract to be
written at the
foot or on the
back of the
abstract.

I certify that the within [*or foregoing*] abstract is perfect [*or as perfect as the vendor is able to make the same.*]

Dated, &c.

(Signed)

A.B.,

Master.

1022

Notice by purchaser's solicitor to vendors to verify abstract.

(Short style of cause.)

Take notice, that I hereby require you forthwith to appoint a time and place for the verification of the abstract of title delivered to me herein as solicitor for Mr. C.D., the purchaser of lot , in the concession of , at the sale in this cause.

Dated, &c.

A.B.,

To Messrs. A. & B.,

Solicitor for Mr. C.D.

Solicitors for Vendors.

1023

Notice by vendors' solicitor of their readiness to verify abstract.

(Short style of cause.)

Take notice, that we will, on the day of , at o'clock in the noon, attend at our office, in the City of , and be then and there prepared to verify the abstract of title [and supplemental abstract, *if any*], delivered to you as solicitor for Mr. C.D., the purchaser of lot in the con. of , at the sale in this cause.

Dated, &c.

A. & B.,

To A.B., Esq.,

Vendors' Solicitors.

Solicitor for Mr. C.D.

1024

Notice by vendors to purchaser after verification.

(Short style of cause.)

Take notice, that if you have any objections or requisitions to make respecting the title to lot , in the con. of , purchased by Mr. C.D., in this cause, you are hereby required to deliver the same within seven days from the service hereof upon you. And take notice, that if no such objections or requisitions be delivered within the

time above limited, the said *C.D.* will be presumed to have accepted the title to the said land.

Dated, &c.

To *A.B.*, Esq.,

Solicitor for Mr. C.D.

A. & B.,
Vendors' Solicitors.

(*Short style of cause.*)

1025

Objections and requisitions of *Mr. C.D.* to the title to Objections and requisitions to title.
lot in the con. of , purchased by him
in this cause.

1. Evidence required to shew the death and intestacy of *C.W.*

2. Evidence required to shew that *A.W.* was the eldest son and heir-at-law of *C.W.*

3. It appears that *A.F.* was married at the time of the execution of the deed from him to *R.L.*, dated ; but the dower of his wife was not then barred. A release of dower must be obtained from her, or evidence given shewing that she is not now entitled to dower in the land in question.

4. The legacy bequeathed to *C.F.* by the will of *T.F.* appears to be a charge upon the land. Evidence is required to prove its payment, or a release must be obtained from the legatee.

5. The proceedings in this suit appear to be defective in the following respect:—

M.D., the second mortgagee named in the abstract, does not appear to be a party.

Dated, &c.

To Messrs. *A. & B.*,

Vendors' Solicitors.

A.B.,
Solicitor for C.D.

(*See next Form.*)

1026

Take notice, that you are hereby required to answer the Notice to be indorsed.
within objections and requisitions within fourteen days from the service thereof; and take notice, that in case you make default in answering the said objections and requisitions within the said time, or in case the answers (if any) made by you shall be unsatisfactory, I shall apply to the Master of this Court [at] for a warrant to consider the within objections and requisitions and your answers, if any, thereto.

Dated, &c.

To Messrs. *A. & B.*,

Vendors' Solicitors.

A.B.,
Solicitor for Mr. C.D.

1027

Table for
ascertaining
the value of
Dower.

DOWER TABLE.

Giving the value of an annuity of \$1, according to the Carlisle Table of mortality

AGE.	5 PER CENT.	6 PER CENT.	7 PER CENT.	AGE.	5 PER CENT.	6 PER CENT.	7 PER CENT.
1	13.995	12.078	10.605	51	11.410	10.422	9.573
2	14.983	12.925	11.342	52	11.154	10.208	9.392
3	15.824	13.652	11.978	53	10.892	9.988	9.205
4	16.271	14.042	12.322	54	10.624	9.761	9.011
5	16.590	14.325	12.574	55	10.347	9.524	8.807
6	16.735	14.460	12.698	56	10.063	9.280	8.595
7	16.790	14.518	12.756	57	9.771	9.027	8.375
8	16.786	14.526	12.770	58	9.478	8.772	8.153
9	16.742	14.500	12.754	59	9.199	8.529	7.940
10	16.669	14.448	12.717	60	8.940	8.304	7.743
11	16.581	14.384	12.669	61	8.712	8.108	7.572
12	16.494	14.321	12.621	62	8.487	7.913	7.403
13	16.406	14.257	12.572	63	8.258	7.714	7.229
14	16.316	14.191	12.522	64	8.016	7.502	7.042
15	16.227	14.126	12.473	65	7.765	7.281	6.847
16	16.144	14.067	12.429	66	7.503	7.049	6.641
17	16.066	14.012	12.389	67	7.227	6.803	6.421
18	15.987	13.956	12.348	68	6.941	6.546	6.189
19	15.904	13.897	12.305	69	6.643	6.277	5.945
20	15.817	13.835	12.259	70	6.336	5.988	5.690
21	15.726	13.769	12.210	71	6.015	5.704	5.420
22	15.628	13.697	12.156	72	5.711	5.424	5.162
23	15.525	13.621	12.098	73	5.435	5.170	4.927
24	15.417	13.541	12.037	74	5.190	4.944	4.719
25	15.303	13.456	11.972	75	4.989	4.760	4.549
26	15.187	13.368	11.904	76	4.792	4.579	4.382
27	15.065	13.275	11.832	77	4.609	4.410	4.227
28	14.942	13.182	11.759	78	4.422	4.238	4.067
29	14.827	13.096	11.693	79	4.210	4.040	3.883
30	14.723	13.020	11.636	80	4.015	3.858	3.713
31	14.617	12.942	11.578	81	3.799	3.656	3.523
32	14.506	12.860	11.516	82	3.606	3.474	3.352
33	14.387	12.771	11.448	83	3.406	3.286	3.174
34	14.260	12.675	11.374	84	3.211	3.102	2.999
35	14.127	12.573	11.295	85	3.009	2.909	2.815
36	13.987	12.465	11.211	86	2.830	2.739	2.652
37	13.843	12.354	11.124	87	2.685	2.599	2.519
38	13.695	12.239	11.033	88	2.597	2.515	2.439
39	13.542	12.120	10.939	89	2.495	2.417	2.344
40	13.390	12.002	10.845	90	2.339	2.266	2.198
41	13.245	11.890	10.757	91	2.321	2.248	2.180
42	13.101	11.779	10.671	92	2.412	2.337	2.266
43	12.957	11.668	10.585	93	2.518	2.440	2.367
44	12.806	11.551	10.494	94	2.569	2.492	2.419
45	12.648	11.428	10.397	95	2.596	2.522	2.451
46	12.480	11.296	10.292	96	2.555	2.486	2.420
47	12.301	11.154	10.178	97	2.428	2.368	2.309
48	12.107	10.998	10.052	98	2.278	2.227	2.177
49	11.892	10.823	9.908	99	2.045	2.004	1.964
50	11.660	10.631	9.749	100	1.624	1.596	1.569

To ascertain the dower in lands, calculate the interest on the value of the property at the legal rate of interest (5%); this gives the income of the property for 1 year; the widow is entitled to $\frac{1}{3}$ of this; multiply this $\frac{1}{3}$ by the amount opposite the widow's age in 5% column, and the result is the amount of dower in gross; e.g.—Widow 40 years old. Property worth \$1,200. Interest at 5%=\$60. Divide by 3=\$20. Multiply by 13.390=\$267.80.

SECTION VII.—MASTER'S CERTIFICATES.

(*Shortened style of cause.*)

I certify that the following and no other proceedings have been had before me upon the reference now pending before me under the judgment [*or, order*] herein, dated the day of , 19 , as by my books appears.

1028

Certificate of Master of proceedings in his office.

5th June, 19 .—Judgment brought in by plaintiff's solicitor. Copy filed. Issued warrant to consider same; returnable 8th June, 19 , at 10 a.m.

8th June, 19 .—The plaintiff's solicitor attended, no one appearing for defendants. Warrant and affidavit of service thereof on defendants filed. Considered judgment. Warrant issued for defendants to bring in accounts directed by judgment, duly verified by affidavit, on the 18th June, 19 ; and I appointed the 19th June, 19 , to proceed thereon, at 11 a.m.

19th June, 19 .—Issued certificate to plaintiff's solicitor of defendants' default in bringing in accounts.

20th June, 19 .—Defendants' accounts and affidavit filed.

Dated, &c.

A.B.,

Master at

(*Formal parts: see No. 1028.*)

I certify that I did by my warrant, dated the day of , &c., direct that the [defendant A.B.] should [here state act required to be done, e.g., bring in and file in my office an account, duly verified by affidavit, in answer to the inquiries, *or, the 5th and 6th inquiries—or as may be—*directed to be made by me under the judgment made in this cause, and dated the day of, &c.], on the day of, &c., at of the clock, &c., and that my said warrant was duly served upon the said A.B., but that he has not [brought in or filed in my office any account, or any affidavit in relation thereto], as required by my said warrant, as by my books appears.

1029

Certificate of Master of default: (1) If warrant served.

Dated, &c.,

A.B.,

Master.

(*Formal parts: see No. 1028.*)

I certify that I did, on the day of 19 , in the presence of [the defendant A.B., *or, the solicitor of the*]

(2) If no warrant served.

defendant *A.B.*—*or as may be*], direct that the said *A.B.* should, on the day of, &c., (*here state act required to be done, as above* [1]); but the said *A.B.*, although he had due notice of my said direction, has not (*here negative the doing of the act required to be done, as above*), as by my books appears.

Dated, &c.

A.B.,
Master.

(*Formal parts: see No. 1028.*)

(3) Of default
of witness.

I certify that *A.B.* did not attend in my office on the day of, &c., for the purpose of being examined as a witness in this cause, although duly required so to do, as by writ of subpoena *ad testificandum*, and the affidavit of service thereof filed in my office, and by my books appears.

A.B.,
Master.

SECTION VIII.—MASTER'S REPORTS.

(*Full style of cause.*)

1030

Master's report under a judgment for foreclosure where no parties are added in his office.

1. In pursuance of the judgment in this action, bearing date the , I was attended by the plaintiff's solicitor; and it appearing to me by the respective certificates of the Sheriff and Registrar of the County of that no party or parties other than the said plaintiff hath or have any lien, charge or incumbrance upon the lands and premises embraced in the mortgage security of the said plaintiff in the writ of summons in this action mentioned subsequent thereto.

2. And it subsequently appearing to me that notice of this proceeding had been duly served upon the said defendant, [*or, and it appearing to me that (state reason for dispensing with service)*], I did therefore dispense with service of notice of this proceeding on the said defendant (*a*).

[*If he had appeared and delivered a defence in the action insert, instead of this, the following:*

And it subsequently appearing to me that the proper warrant, giving the defendant notice of this proceeding, had been duly served upon him.]

(*a*) See Rule 658.

I proceeded to hear and determine the matters referred to me by the said order, and thereupon I was attended by the respective solicitors for the said plaintiff and the said defendant (*if the fact be so*) [*or, I was attended by the solicitor for the said plaintiff (no one attending on the part of the said defendant, though duly notified as aforesaid)*]:

3. And I find that at the date of this my report, there is due to the said plaintiff, for principal money, interest and costs, and that there will accrue due to him for subsequent interest upon his said mortgage security, up to the day hereinafter appointed for payment, the sums following, viz.:

I.

CLAIM OF THE SAID PLAINTIFF.

Balance of principal money due on the mortgage in the statement of claim mentioned, dated 1st January, 19 , given by the said defendant to the said plaintiff, securing \$1,000 and interest.	\$700 00
Interest on \$700 from 1st January, 19 , (up to which time I find the interest has been paid), to 2nd January, 19 (<i>date of report</i>).....	126 00
	<hr/>
	\$826 00
Six calendar months' subsequent interest on \$700 from 2nd January, 19 , to 2nd July, 19 , ..	21 00
	<hr/>
	\$847 00
Costs taxed and revised at	41 50
	<hr/>
Total due Plaintiff 2nd July, 19 ,	\$888 50

4. And I appoint the said sum of \$888.50 to be paid by the said defendant into the [branch] office in the of of the Canadian Bank of Commerce (*or as may be*), to the joint credit of the said plaintiff and the Accountant of the Supreme Court of Judicature for Ontario, between the hours of ten of the clock in the morning and one of the clock in the afternoon of the said second day of July next, being six calendar months next after the making of this my report.

All which I humbly certify and submit to this Honourable Court.

Dated at this 2nd day of Jan., 19 .

1031

Master's report under a judgment for foreclosure, where subsequent incumbrancers are made parties in his office, but do not prove any claim.

In the High Court of Justice.

Between—*A.B.*,

Plaintiff,

and

C.D. (By writ), and *E.F.* and *G.H.*, made parties in the Master's office, Defendants.

1. In pursuance of the judgment in this action, as originally entitled, bearing date the day of 19 , I was attended by the plaintiff's solicitor; and it appearing to me by the respective certificates of the Sheriff and Registrar of the County of , that the said *E.F.* and *G.H.*, not before parties to this action, have some lien, charge or incumbrance upon the lands and premises embraced in the mortgage security of the said plaintiff in the writ of summons in this action mentioned subsequent thereto, and ought to be made parties, I did, on the day of , order that they should be made parties to this action, according to the Rules of the Supreme Court of Judicature.

2. And it subsequently appearing to me that the notice in accordance with Form 77, referred to in Rule 746, of the said Rules, had been duly served upon each of the said *E.F.* and *G.H.*, and that the proper warrant giving the defendant *C.D.* notice of this proceeding had been served on him (*a*), I proceeded to hear and determine the matters referred to me by the said judgment, and thereupon I was attended by the solicitor for the said plaintiff (no one attending on the part of the said *C.D.*, *E.F.* or *G.H.*, though duly notified as aforesaid):

3. And I find that at the date of this my report, there is due to the said plaintiff, for principal money, interest and costs, and that there will accrue due to him for subsequent interest upon his said mortgage security, the sums following, viz:

I.

CLAIM OF THE SAID PLAINTIFF.

(*Set out claim as in No. 1030.*)

4. And I certify, that although notified as aforesaid, no one of the said parties above designated as parties made in the Master's office, has attended before me, or proved before me any subsisting lien, charge, or incumbrance upon the said lands and premises whereby they have under the said Rules

(a) See *McCormack v. McCormack*, 6 Pr. R. 208.

of the Supreme Court of Judicature disclaimed and are foreclosed of all interest in the said lands and premises; and I hereby declare them to be foreclosed accordingly.

5. And I appoint the said sum of \$888.50 to be paid by the said *C.D.*, into the [branch] office in the of of the Canadian Bank of Commerce (*or as may be*) to the joint credit of the said plaintiff, and the Accountant of the Supreme Court of Judicature for Ontario, between the hours of ten of the clock in the morning and one of the clock in the afternoon of the said day of , being six calendar months next after the making of this my report.

All which I humbly certify and submit to this Honourable Court.

Dated at this day of, 19 .

In the High Court of Justice.

A.B.,

and

C.B. (By writ) and *E.J.*, *G.H.*, and *J.K.*,
made parties in the Master's office,

Defendants.

Plaintiff,

1032

Master's report under a judgment for foreclosure, where subsequent incumbrancers are made parties in his office, and one proves his claim.

1. In pursuance of the judgment in this action, as originally entitled, bearing date the day of , 19 , I was attended by the plaintiff's solicitor; and it appearing to me by the respective certificates of the Sheriff and Registrar of the County of , that the said *E.J.*, *G.H.*, and *J.K.*, not before parties to this action, have some lien, charge or incumbrance upon the lands and premises embraced in the mortgage security of the said plaintiff in the writ of summons in this action mentioned subsequent thereto, and ought to be made parties, I did, on the day of order that they should be made parties to this action, according to the Rules of the Supreme Court of Judicature.

2. And it subsequently appearing to me that the notice in accordance with Form 77, referred to in Rule 746 of the said Rules, had been duly served upon each of the said *E.J.*, *G.H.* and *J.K.*, and that the proper warrant giving the defendant *C.D.* notice of this proceeding had been served on him, I proceeded to hear and determine the matters referred to me by the said judgment, and thereupon I was attended by the respective solicitors for the said plaintiff, and the said *E.J.* (no one attending on the part of the said *C.D.*, *G.H.*, and *J.K.*, though duly notified as aforesaid):

3. And I find that at the date of this my report, there is due to the said plaintiff, and to the said *E.J.*, for principal money, interest and costs, and that there will accrue due to them for subsequent interest upon the mortgage security and the judgment hereinafter mentioned, the sums following, viz.:

I.

4. CLAIM OF THE SAID PLAINTIFF.

(Set out Plaintiff's claim as in No. 1030.)

II.

CLAIM OF THE SAID *E.J.*

5. Amount of a judgment recovered by the said *E.J.* against the said *C.D.*, in the Court of , on the first day of July, 19 , (on which a *fi. fa.* against the lands of the said *C.D.* was placed in the hands of the Sheriff of the County of , on the first day of September, 19 , which was duly renewed (*if the fact be so*) on the day of , and on the day of), for \$1,000 true debt, and \$50 taxed costs.

Debt	\$1,000 00
Costs taxed	50 00

\$1,050 00

Interest thereon from 1st July, 19 , to January	
2nd, 19 ,	220 50

\$1,270 50

<i>Fi. fas.</i>	\$10 00
Sheriff's fees	15 00

25 00

\$1,295 50

Costs allowed on this claim	9 00
-----------------------------------	------

Total due on this claim, 2nd January, 19 , ... \$1,304 50

6. And I certify, that although notified as aforesaid, no one of the said parties above designated as parties made in the Master's office, excepting the said *E.J.*, has attended before me, or proved before me any subsisting lien, charge or incumbrance upon the said lands and premises, whereby they have under the said Rules disclaimed, and are foreclosed of all interest in the said lands and premises; and I hereby declare them to be foreclosed accordingly.

7. And I have settled the priorities between all the said parties to this action who have proved their claims before me as aforesaid, and find that such priorities are in accordance with the order in which the said claims are hereinbefore mentioned and set forth.

8. And I further certify that of the said plaintiff and the said defendants, the said plaintiff and the said *E.J.* only having attended before me in respect of the matters aforesaid, appear to me, to be of them the only incumbrancers upon the said lands and premises affected by the plaintiff's said mortgage.

9. And I appoint the said sum of \$888.50 to be paid by the said *E.J.* (a) into the [branch] office in the of of the Canadian Bank of Commerce (*or as may be*) to the joint credit of the said plaintiff and the Accountant of the Supreme Court of Judicature for Ontario between the hours of ten of the clock in the morning and one of the clock in the afternoon of the said day of , 19 , being six calendar months next after the making of this my report.

All which I humbly certify and submit to this Honourable Court.

Dated at , this day of , 19 .

Master at

Same as No. 1030, excepting that the words "subsequent thereto" at the end of the first paragraph of the form are omitted in a report on a sale judgment.

1033

Master's report under a judgment for sale where no parties are added.

Same as No. 1031, excepting that the words "subsequent thereto" towards the end of the first paragraph of the form are omitted in a report on a sale judgment.

1034

Master's report under a judgment for sale, where parties are added, but none prove.

(a) If there be more than one subsequent incumbrancer who proves a claim, one day is given to all to redeem. In case they all fail to redeem, a new account is taken, and the mortgagor is then allowed one month's further time to redeem: Con. Rule 393. Where a subsequent incumbrancer redeems the plaintiff for form of subsequent report, see No. 1039.

1035

Master's report under a judgment for sale, where incumbrancers are added, some of whom prove.

In the High Court of Justice.

Between,

A.B.,

Plaintiff,

and

C.D. (By writ), and *E.F.*, *G.H.*, *J.K.* and *S.M.*, made parties in the Master's office,

Defendants.

1. In pursuance of the judgment made in this action, as originally entitled, bearing date the day of , I was attended by the plaintiff's solicitor; and it appearing to me by the respective certificates of the Sheriff and Registrar of the County of that the said *E.F.*, *G.H.*, *J.K.* and *S.M.* not before parties to this action, had some lien, charge or incumbrance upon the lands and premises embraced in the mortgage security of the said plaintiff in the writ of summons in this action mentioned, and ought to be made parties, I did, on the day of order that they should be made parties to this action, according to the Rules of the Supreme Court of Judicature.

2. And it subsequently appearing to me that the notice in accordance with Form 77, referred to in Rule 746 of the said Rules, had been duly served upon each of the said *E.F.*, *G.H.*, *J.K.* and *S.M.*, and that the proper warrant giving the defendant, *C.D.*, notice of this proceeding, had been served on him.

3. I proceeded to hear and determine the matters referred to me by the said judgment, and thereupon I was attended by the respective solicitors for the said plaintiff, and the said *E.F.* and *G.H.* [no one attending on the part of *C.D.*, *J.K.* or *S.M.*, though duly notified as aforesaid]:

4. And I find that at the date of this my report, there is due to the said plaintiff, and to the said *E.F.* and *G.H.* for principal money, interest and costs, and that there will accrue due to them for subsequent interest, upon the mortgage securities and the judgment hereinafter mentioned, the sums following, viz.:

I.

5. CLAIM OF THE SAID PLAINTIFF.

(Insert plaintiff's claim as in No. 1030.)

II.

6. CLAIM OF THE SAID *E.F.*

(Insert *E.F.*'s claim as in No. 1032.)

(adding six months' interest.)

III.

CLAIM OF THE SAID *G.H.*

7. Balance of principal due on a mortgage, dated 1st July, 19 , registered 1st October, 19 , given by the said <i>C.D.</i> to this claimant, securing \$1,000 and interest at 8%.....	\$500 00
Balance of interest due 2nd January, 19	50 00
	<hr/>
	\$550 00
Six months' subsequent interest on \$500 from 2nd January, 19 , to 2nd July, 19	20 00
	<hr/>
	\$570 00
Costs allowed on this claim.....	9 00
	<hr/>
Total due on this claim 2nd July. 19	\$579 00

8. And I certify that, although notified as aforesaid, no one of the said parties above designated as parties made in the Master's office, excepting the said *E.F.* and *G.H.* has attended before me, or proved before me any subsisting lien, charge, or incumbrance upon the said lands and premises, whereby they have, under the said Rules, disclaimed and are foreclosed of all interest in the said lands and premises: and I hereby declare them to be foreclosed accordingly.

9. And I have settled the priorities between all the said parties to this action who have proved their claims before me as aforesaid, and find that such priorities are in accordance with the order in which the said claims are hereinbefore mentioned and set forth.

10. And I further certify that of the said plaintiff and the said defendants, the said plaintiff and the said *E.F.* and *G.H.*, only having attended before me in respect of the matters aforesaid, appear to me to be of them the only incumbrancers upon the said lands and premises affected by the plaintiff's said mortgage.

11. And I appoint the said respective sums of \$888.50, \$1,336.00 and \$579.00 to be paid by the said *C.D.* into the [principal] office in the of of the Canadian Bank of Commerce (or as may be) to the joint credit respectively of the said plaintiff, the said *E.F.* and the said *G.H.*, and the Accountant of the Supreme Court of Judicature for Ontario, between the hours of ten of the clock in the morning and one of the clock in the afternoon of the said day of ,

being six calendar months next after the making of this my report.

All which I humbly certify and submit to this Honourable Court.

Dated at this day of

Master at

1036

Master's report on taking a subsequent account under a foreclosure judgment, or under an order directing a new day of payment.

(Formal parts: see No. 1030.)

1. In pursuance of the [judgment in this action, as originally entitled], bearing date the day of , I have been attended by the respective solicitors for the said plaintiff, and the said (*such parties, if any, as have attended: and if any parties have been served with warrants and have not attended, that fact should be stated; see No. 1031*): and having heard the evidence adduced, and considered of the matters thereby to me referred, I find as follows:

2. That having by my report made in this action, bearing date the day of , found to be due to the said plaintiff for principal, interest and costs, subsequent interest and subsequent costs (*if the fact be so*), upon his mortgage security in the writ of summons in this action mentioned, up to the day of , the sum of \$,

3. I have now proceeded to take an account of subsequent interest, and have taxed to the plaintiff his subsequent costs: all of which appears as follows, viz.:

(Set out account as in forms Nos. 1030 et seq.)

And I appoint the said sum of \$ (as in Form No. 1032, with such alterations as the case may require.) (a)

1037

Master's report under a judgment for redemption.

(Formal parts: see No. 1030.)

1. In pursuance of the judgment made in this action, bearing date the day of , A.D. 19 , I have been attended by the respective solicitors for the said parties, and having heard the evidence adduced and considered of the matters thereby to me referred, I find as follows, viz.:

2. That there is now due and will accrue due to the said defendant by the said plaintiff upon the mortgage in the

(a) One month is allowed where a new day is appointed, unless otherwise ordered: Con. Rule 393.

[pleadings] mentioned for principal, interest, subsequent interest and costs the sums following, viz.:

(Set out claim as in Form No. 1030.)

3. And I appoint the said sum of to be paid by the plaintiff into the [principal] office in the of of the Canadian Bank of Commerce, to the joint credit of the said defendant and the Accountant of the Supreme Court of Judicature for Ontario, between the hours of ten of the clock in the morning and one of the clock in the afternoon of the said day of , being six calendar months next after the making of this my report.

All which I humbly certify and submit to this Honourable Court.

Dated at this day of , 19 .

See Forms Nos. 1030 to 1032.

(Formal parts: see No. 1030.)

1038

Master's report in suit by derivative mortgage for foreclosure. (b)

1039

1. In pursuance of the judgment made in this cause, as originally entitled, bearing date the day of , I have been attended by the solicitor for the said *E.F.* (*the incumbrancer*), no one attending on the part of the said *C.D.* (*the mortgagor*) although duly notified (*if the fact be so*)—and having heard the evidence adduced, and considered of the matters thereby to me referred, I find as follows, viz.:

Master's report after the plaintiff has been redeemed by a subsequent incumbrancer.

2. That having by my report made in this cause, bearing date the day of , found to be due to the said plaintiff for principal, interest, and costs, and for subsequent interest up to the day of , upon his mortgage security in the bill in this cause mentioned, the sum of \$.

(b) The Master first takes an account of the amount due to the plaintiff and to the derivative mortgagor, and a day is appointed, six months from the making of the report, for the original mortgagor to pay the plaintiff the amount found due him, not exceeding the sum found due to the derivative mortgagor, and the balance (if any), after deducting the amount of the plaintiff's claim from the amount found due to the derivative mortgagor, is directed to be paid to the latter. On the original mortgagor being foreclosed by a final order, the Master takes a subsequent account between the plaintiff and his mortgagor, and appoints a day one month (see Con. Rule 393) thereafter for the latter to redeem.

3. And having also in and by the said report found to be due to the said *E.F.*, for principal, interest, and costs, upon his judgment (*or mortgage, as the case may be*) in the said report set forth, up to the day of , the sum of \$,

4. And the said *E.F.* having redeemed the said plaintiff by paying to him the said sum of \$,

5. I have now proceeded to take an account of subsequent interest, on foot of the said claim of the said plaintiff and the said *E.F.*, and have taxed to the said *E.F.* his subsequent costs; all of which appears as follows, viz.:

I.

Amount paid to redeem the said plaintiff on the			
day of	.....		\$
Interest thereon from the	day of	(date of pay-	
ment) to the	day of	(date of report).....	
			\$

II.

Amount found due to the said <i>E.F.</i> , by the said re-			
port	.....		\$
Interest on \$	from the	day of	to the
day of	(date of report)	.....
			\$

Amount of redemption money as above.....	
One calendar month's subsequent interest on the sum	
of \$ + \$ = \$, from the	day of
to the	day of
Subsequent costs, taxed and revised at	.....

Total due to <i>E.F.</i> , on the	day of	\$
-----------------------------------	--------	-------	----

And I appoint the said sum of \$ to be paid by the said *C.D.* (*a*) (*the mortgagor*) into the [branch] office in the of of the Bank, to the joint credit of the said *E.F.* and the Accountant of the Supreme Court of Judicature for Ontario, between the hours of ten of the clock in the morning and three of the clock in the afternoon of the said

(a) If there are other incumbrancers subsequent to the incumbrancer who redeemed the plaintiff, they should now be appointed to redeem, and so on, on each successive redemption; and when all the incumbrancers failing to redeem have been foreclosed, then the mortgagor should be appointed to redeem.

day of _____, being one calendar month next after the
making of this my report.
All which, &c.
Dated at, &c.

A.B.,
Master at

in the High Court of Justice.

Between—A.B.,

Plaintiff,

and

C.D. and E.F. (By writ), and G.H.

and J.K. made parties in the Mas-
ter's office Defendants.
In pursuance of the judgment made in this action, as
originally entitled, bearing date the _____ day of _____, 19 _____, I
as by the respective certificates of the Sheriff and Registrar
of the County of _____ that the said G.H. and J.K., not before
parties to this action, had some lien, charge or incumbrance
upon the lands and premises embraced in the mortgage secur-
ity of the said plaintiff in the writ of summons in this action
mentioned subsequent thereto, and ought to be made parties,
did, on the _____ day of _____, order that they should
be made parties to this action, according to the Rules of the
Supreme Court of Judicature for Ontario.

Master's re-
port under a
foreclosure
where a
defendant by
the Mas-
ter's office
is also an
incumbrancer
requiring
service of ap-
pointment,
under Rule
748. (b)

1040

2. And it subsequently appearing to me that the notice in
concordance with Form 77, referred to in Rule 746, had been
served upon each of the said G.H. and J.K.: and that
the appointment in accordance with the form referred to in
Rule 748, together with the proper warrant, had been duly
served upon the said defendant by writ, E.F., and that the
proper warrant giving the defendant C.D. notice of this pro-
ceeding had also been served on him,
I proceeded to hear and determine the matters referred
me by the said judgment, and thereupon I was attended
by the respective solicitors for the said plaintiff and the said
E.F. (no one attending on the part of the said C.D., G.H., or
J.K., though duly notified as aforesaid): (*Proceeding as in
the forms already given, Nos. 1030, et seq.*)

(*Formal parts: see No. 1030.*)

1041

Master's report on passing a Receiver's accounts.

1. In pursuance of the judgment (*or order*) made in this cause, bearing date the day of , 19 , I have been attended by *A.B.*, receiver of the rents and profits of the real estate of *C.D.*, in the pleadings in this cause named, and of the profits of his personal estate, also therein named, and by the respective solicitors for the said parties [*or, for the said E.F., G.H., and J.K. or, as the case may be*]; and the said receiver having brought before me an account of the rents and profits of the said real and personal estate, and of his payments and allowances thereout for taxes, repairs, and other proper disbursements for the year commencing on and ending on , I have in the presence of the said receiver, as also in the presence of the said solicitors, proceeded to take the said account:

2. And I find that the said receiver has received by and out of the said rents and profits for that year the sum of\$1,000 00
And that he has allowed to several tenants of the
said real estate, for taxes and repairs (*or as the case may be*), in the aggregate the sum of.... 100 00

Leaving a balance of \$900 00

And I have allowed to him 5% on the said sum of
\$1,000, being 50 00

as and for his salary as such receiver, during the above mentioned period.

3. And I have taxed to the said receiver his costs of passing his said accounts, and they have been revised at the sum of \$20, which two last mentioned sums of \$50 and \$20, being taken from the said sum of \$900, leave the final sum of \$830 as cash in the hands of the said receiver to the credit of the said estate on the said day of (*the day above mentioned, being the day up to which the account is made up.*)

All which I humbly certify and submit to this Honourable Court.

Dated at this day of , 19 .

A.B.,
Master at

Form of Report in Administration Suit. (Rule 697.)

In the High Court of Justice.

Between—A.B., Plaintiff,
and
C.D., Defendant.

1042

Report in ad-
ministration
proceedings.
(a)

(Date.)

Pursuant to the judgment herein made, dated the day of , 19 , having caused an office copy thereof to be served upon [state the names of persons served under Rule 203 or 660, and also the names of those upon whom service has been dispensed with, and the reason for dispensing with service], I proceeded to dispose of the matters referred to me, and thereupon was attended by the solicitors for all parties interested [or as the case may be].

[If a guardian ad litem has been appointed for any of the parties, this should be so stated, and the reason why such appointment was made.]

and I find as follows:

1. The personal estate not specifically bequeathed of the testator come to the hands of the executors, and wherewith they are chargeable, amounts to the sum of \$, and they have paid, or are entitled to be allowed thereout, the sum of \$, leaving a balance due from [or to] them, of \$, on that account.

[If no personal estate, say: No personal estate has come to the hands of the executors, nor are they chargeable with any.]

2. The creditors' claims sent in pursuant to my advertisement in that behalf (published in issues of the newspaper called), and which have been allowed, are set forth in the first schedule hereto, and amount altogether to \$

[If no creditors, say: No creditor has sent in a claim pursuant to my advertisement in that behalf, nor has any such claim been proved before me.]

3. The funeral expenses of the testator amounting to \$ have been paid by the executors and are allowed to them in the account of personal estate.

4. The legacies given by the testator are set forth in the second schedule hereto, and with the interest therein mentioned, remain due to the persons named [*or as the case may be*].

5. The personal estate of the said testator outstanding or undisposed of, is set forth in the third schedule hereto.

In this third schedule personal estate not specifically bequeathed should be set forth separately from the other personalty outstanding or undisposed of. If there is no specific bequest, it should be so stated in the body of the report.

6. The real estate which the said testator was seised of or entitled to, and the incumbrances (*if any*) affecting the same, are set forth in the fourth schedule hereto.

7. The rents and profits of the testator's real estate received by the said executors, or with which they are chargeable, amount to \$, and they have paid, or are entitled to be allowed thereout the sum of \$, leaving a balance due from [*or to*] them of \$ on that account.

[*If no rents, &c., received, say: No rents and profits have come to the hands of the said executors, nor are they chargeable with any.*]

8. I have allowed the said executors the sum of \$ as a compensation for their personal services in the management of the said estate.

Con. Rules, 1888, Form 42.

MASTER'S REPORTS.

691

The first Schedule referred to in the foregoing report.

No.	NAMES OF CREDITORS.	PRINCIPAL.	INTEREST ALLOWED.		Costs (if any) subsequent to judgment.	Costs of this suit.	TOTAL.
			Rate per Cent.	Amount to date of Report.			
		\$ c.	\$ c.	\$ c.	\$ c.	\$ c.	\$ c.
	[Distinguish any which are secured by mortgage, lien, or otherwise entitled to any priority.]						

[No general form can well be framed for the other Schedules, but in all cases brevity is to be studied. Where particulars are given they should show merely the general character of the things described, as, for instance, the Schedule of outstanding personality may say : A number of book debts amounting in the aggregate to \$; a quantity of household furniture and effects valued at \$; and the like short particulars should be given in other cases. Lands should be described without setting forth metes and bounds.

Con. Rules, 1888, Form 42.

1043

Report in a
partition mat-
ter where a
sale is re-
ported.

(Full style of matter: see No. 24.)

Pursuant to the order herein dated the day of 19 , I was attended by the solicitors for the plaintiff, and it appearing that *C.L.* and *J.L.* should attend or be enabled to attend the proceedings before me, I directed them to be served with process according to the practice of the Court, and it subsequently appearing that they had been duly served, I proceeded in presence of the solicitors for the plaintiff and defendants (other than the defendant *C.L.*), and the Official Guardian *ad litem* for *M.A.C.*, a person of unsound mind, no one appearing for the defendant *C.L.*, although duly notified in that behalf, and find as follows:

1. A sale of the lands and premises in question is more beneficial for the parties interested than a partition thereof and a sale has been effected as hereinafter mentioned.

2. *W.C.*, the intestate, died in or about the month of , 19 , leaving him surviving his widow *B.C.*, (who departed this life in the year), and the following children, namely, *W.J.C.*, *J.C.*, *E.C.*, *M.A.C.* a person of unsound mind and *C.C.*, who departed this life on or about the month of .

3. As appears by my certificate of sale herein dated the , 19 , the lands and premises in question herein have been sold to at and for the price or sum of \$.

4. The parties interested or entitled to share in the proceeds of the said sale, and the shares and interests to which they are entitled are as follows: *J.L.*, the assignee of the share of the above-named *J.C.*, and *W.J.C.*, to a one-third share therein, *R.W.* the assignee of the share of the above-named *E.C.*, to a one-sixth share therein, *M.A.C.*, to a one-sixth share therein, and (the Toronto General Trust Corporation), the administrators of the estate and effects of *C.C.* to a one-third share therein.

5. There are no incumbrances affecting the lands and premises in question herein. (*Or, if there are incumbrances see No. 1032.*)

6. No creditor has sent in a claim pursuant to the advertisement issued in that behalf nor has any claim been proved before me. (*If there are claims: see No. 1042.*)

7. I have settled the commission to be allowed the parties hereto in lieu of taxed costs, together with their disbursements and the several amounts thereof together with the proper distribution of the proceeds of the said sale appear in the schedule hereto.

8. In the said schedule also appear the several sums due and properly payable to the persons therein named for arrears of taxes for the current year, and commissions on the sale of the above mentioned lands to an estate agent.

(Signature of Master.)

Schedule referred to in the foregoing Report.

Purchase money	\$800 00
Deduct	
Commission allowed plaintiff's solicitor including \$86.05 for disbursements.....	\$176 05
Commission allowed solicitor for defendant <i>L.</i>	15 00
Commission allowed Official Guardian....	10 00
Commission allowed <i>A.G.S.</i> on sale of property	20 00
Proportion of current year's taxes and arrears payable to purchaser <i>C.D.</i> and settled at	93 16
Arrears of taxes paid by the Toronto General Trusts Corporation as directed by order payable to said corporation	219 73
Arrears of taxes paid by defendant <i>J.L.</i> \$154.05, costs of proving same, \$5.00..	159 05
	<hr/> \$692 99
	<hr/> \$107 01

Amount divisible as follows:

Defendant <i>J.L.</i> , assignee of shares of <i>J.C.C.</i> and <i>W.J.C.</i>	35 67
<i>R.W.</i> , assignee of share of <i>E.C.</i>	17 83
<i>M.A.C.</i> , a lunatic	17 84
The Toronto General Trusts Corporation, administrator of estate of <i>C.C.</i> , deceased	35 67
	<hr/> \$107 01
	(Signature of Master.)

SECTION IX.—CONTEMPTS IN MASTER'S OFFICE.

(Formal parts: see No. 403.)

1044

on behalf of the [plaintiff], for an order to commit [the defendant *C.D.*] to gaol for his contempt in not bringing into the office of the Master of this Court [at] the accounts and statements by the said Master directed to be

Notice of motion to commit for contempt in Master's office.

brought into and filed in his office by the said [defendant *C.D.*] on the day of . And take notice that (&c., as in *Form No. 403.*)

1045

Master's certificate of default.

(Shortened style of cause.)

At the request of the [plaintiff's] solicitor, I certify that I did on the day of , [by my warrant in that behalf], direct the defendant *C.D.* to [*specify the act as to which default has been made; e.g., bring in and file in my office on the day of , the accounts in answer to the inquiries directed by the judgment in this cause dated the day of , duly verified by his affidavit, and to bring in and deposit in my office at the same time under oath all books of account, documents, and papers relating to the estate of E.D. in the said judgment mentioned*], but the said defendant *C.D.*, although duly served with my said warrant [*or, notified of my said direction*], has not [brought in and filed in my office any accounts in answer to the inquiries directed by the said judgment, nor any affidavit in relation thereto, nor has he brought in and deposited in my office any books of account, documents or papers relating to the estate of the said *F.D.*], pursuant to my said [warrant, *or, direction*], as by my books appears. (*a*)

Dated, &c.

I.O.,
Master

(Formal parts: see No. 902.)

1046

Order to commit for contempt in M.O.

(Shortened style of cause.)

Upon the application of the [plaintiff], and upon hearing read the certificate of the Master [at], and the judgment herein made in this cause, and it appearing that the [defendant *C.D.*] has not brought into the office of the said Master the accounts and statements [by the said Master directed to be filed by him the said defendant *C.D.*], although duly required so to do: It is ordered that the Sheriff of any County or Union of Counties in which the said [defendant *C.D.*] may be found, do take the said *C.D.* into his custody, and

(*a*) Where the defaulting party has not wholly neglected to comply with the direction, but it is claimed that what he has done is an insufficient compliance, a warrant should be obtained from the Master calling on the defaulting party to show cause why he should not do such further act as may be deemed necessary in order effectually to comply with the Master's direction.

commit [him] to the gaol of his County or United Counties to answer [his] said contempt. And it is further ordered that a writ or writs of attachment do issue accordingly.

(*Formal parts: see No. 403.*)

on behalf of the [defendant *C.D.*], that he may be discharged from the custody of the Sheriff of the County of , touching his contempt for not [leaving certain accounts and statements] in the office of the Master of this Court [at], pursuant to the said Master's warrant, dated the day of , [the defendant hereby submitting to pay to the (plaintiff's) solicitor or agent, the costs occasioned by the said contempt (b)], the accounts and statements having now been left. And take notice (&c., as in No. 403.)

1047

Notice of motion for discharge from custody on leaving accounts.

(*Formal parts: see No. 744.*)

1. The several accounts and statements which, by the warrant of the Master of this Honourable Court [at], dated the day of , the defendant *C.D.* was ordered to bring in and file, duly verified by affidavit, in the office of the said Master, were brought in and filed in the office of the said Master on the day of , duly verified by the affidavit of the said defendant *C.D.*, pursuant to the said warrant.

2. The said [defendant *C.D.*] is now in the custody of the Sheriff of the County of , under an attachment for a contempt in not bringing in and filing the said accounts and statements pursuant to the said Master's warrant—as I know from (*shew means of knowledge*).

1048

Affidavit in support.

(*Shortened style of cause.*)

I certify that the [defendant *C.D.*] has [brought in and filed in my office the several accounts and statements, duly verified by affidavit, which by my warrant dated the day of , I directed him to bring in and file in my office in this cause.

Dated, &c.

1049

Master's certificate of compliance with warrant.

(b) Where a party in custody has otherwise purged his contempt, the payment of the costs of the contempt will not be made a condition precedent to his discharge: *Jackson v. Mawby*, L. R. 1 Ch. D. 87.

CHAPTER XV.

PROCEEDINGS TO ENFORCE JUDGMENTS AND ORDERS.

SECTION I.—SERVICE OF THE JUDGMENTS OR ORDERS.

1050

Memorandum, to be indorsed on the copy of a judgment or order, for service in cases where a party is ordered to do an act other than payment of money. (a)

If you, the within named *A.B.*, neglect to obey this judgment [*or, order*] by the time therein limited, you will be liable to be arrested by the Sheriff, and you will also be liable to have your estate sequestered, for the purpose of compelling you to obey this judgment [*or, order*]. If you wish to apply to the Court, to add to, vary, or set aside the said judgment [*or, order*], or to suspend the operation thereof, you must do so before the expiration of the time within limited.

To *A.B.*, the within named defendant.

W.B.,
Plaintiff's Solicitor.

1051

The like, on a corporation aggregate.

If you, the within named (*insert name of corporation*) neglect to obey this judgment [*or, order*] by the time therein limited, you will be liable to have your lands and tenements, goods and chattels, distrained upon, and to have your estate sequestered, for the purpose of compelling you to obey this judgment [*or, order*] (*conclude as in No. 1050*).

To the *W. X. Co.*, the within named defendants.

A.B.,
Plaintiff's Solicitor.

1052

Notice of motion to enlarge the time limited by a judgment or order to obey same.

(*Formal parts: see No. 403.*)

on the part of the plaintiff (*or as may be*), that the time limited by the judgment [*or, order*] dated the _____ day of _____, 19____, for the defendant *A.B.* (*or as may be*) to *describe the act directed to be done by the judgment or order; as thus:* pay into the bank, with the privity of the

(a) It is not very clear that it is absolutely necessary to indorse this notice, as attachments can no longer be issued on *præcipe* for disobedience: see, however, *per* MacLennan, J.A., *Berry v. Donovan*, 21 Ont. App. at p. 31.

Accountant of the Supreme Court of Judicature for Ontario, to the credit of this action, the sum of \$1,000], pursuant to the judgment [*or, order*] dated the day of , [*or* days after the service thereafter of the order to be made hereon *or as may be*]. And take notice that on, &c. (*Conclude as in No. 403.*)

(*Formal parts: see No. 403.*)

on the part of the plaintiff (*or as may be*), that the defendant **1053** The like, to fix, time, where none limited, or limited time expired.
A.B. (*or as may be*) may be ordered, on or before the day of , 19 , or within days after the service of the order to be made on this application to (*describe the act to be done: see description in last Form*). pursuant to the judgment [*or, order*] dated the day of . 19 . And take notice that on, &c. (*Conclude as in No. 403.*)

(*Formal parts: see No. 403.*)

on the part of the plaintiff (*or as may be*), that service of the judgment [*or, order*] dated the day of , 19 , together with a copy of the order to be made hereon, upon **1054** Notice of motion for substituted service of a judgment or order.
[*describe the proposed substitute; as thus: C.D., of (residence and addition—or, C.D. and E.F., members of the firm of D. & F., of (place of business and addition), or upon either of them*]]—may be deemed good service on the defendant *A.B.* (*or as may be*). And take notice, &c., as in *No. 403.*)

(*Formal parts: see No. 744.*)

1. *Shew what efforts have been made to effect personal service of the judgment or order; and why it cannot be effected.* **1055** Affidavit in support.

2. *Shew upon what person, or in what way, substituted service is proposed to be made; and the special grounds for selecting such person, &c.*

(*Shew means of knowledge.*)

1056

Affidavit of service of judgment or order and Taxing Master or Master's certificate, and of default made.

(Formal parts: see No. 744.)

1. On the day of , 19 , I served, in manner hereinafter mentioned [*describe the person served; as thus: the defendant A.B.—Or, C.D., the person named in the order dated the day of , 19 , hereinafter mentioned*] with the judgment [*or, order*] made in this cause [*or, matter*], dated the day of , 19 , now shewn to me, marked "A." (*If more than one judgment or order was served, add: and also with the judgment [*or, order*] made, &c., by, &c., dated, &c., now shewn to me and marked "B."—If on a substitute, add: and also with the order made in this cause dated the day of , 19 , now shewn to me marked "C."*)—Where the amount to be paid has been ascertained by the taxing officer or Master's certificate, subsequently to the order directing payment, add: and also with the certificate of G.H., Esquire, the taxing officer of this Court *or, of R.M., Esquire, Master*], dated the day of , 19 , now shewn to me and marked "D," by delivering a true copy thereof [*or, of each of them*] to, and leaving the same with, the said defendant A.B. (*or as may be*), at (*state where, in the County of ; and I at the same time shewed to him [*or, her*] the said original judgment [*or, order—or as may be*] duly passed and entered [*or, an office copy of the said judgment (or as may be)*—If so: and also the original [*or, an office copy of the said*] certificate duly signed by the Master or taxing officer.*

2. The copy [*or, each copy*] served as aforesaid of the said judgment [*or order, &c.*] had indorsed thereon, at the time of the aforesaid service thereof, a memorandum in the words following, that is to say: (*Set out a copy of the memorandum*).

Prove that the judgment or order has not been obeyed.

SECTION II.—MOTIONS FOR LEAVE TO ISSUE EXECUTION AND TO STAY EXECUTION.

(Formal parts, as in No. 403.)

1057

Notice of motion for leave to issue execution. (a)

On behalf of the above-named plaintiff [*or, and , the executors of the last Will and Testament of the plaintiff A.B., since deceased,*

(a) As to when such a motion is necessary, see Rule 864.

or as may be necessary] that he, [*or, they*] may be at liberty to issue execution against the defendant *C.D.*

[*Or*, against _____ and _____, as legal personal representatives of the defendant *C.D.*, since deceased.]

[Or, against _____ as being a member of the
above-named firm of *D. & Company, or as may be necessary*],
upon the judgment [or, order] in this action, dated the day
of _____, 19 ____.

(Formal parts, as in No. 403.)

For an order that the plaintiff be at liberty to issue execution against the defendant on the judgment herein dated the _____ day of _____, 19____, notwithstanding that six years have elapsed since the judgment.

1058

Notice of motion for leave to issue execution after six years.

(Formal parts: see No. 744.)

I, A.B., &c., [solicitor for] the plaintiff make oath and say as follows:—

1059

Affidavit in support.

1. On the day of , 19 , judgment was recovered by me [or, by the plaintiff] against the defendant for \$ and \$ costs.

2. No part of the said sum has been paid or satisfied, and the said judgment remains in full force [or, the sum of \$ part only of the said \$ has been paid and satisfied and the said judgment remains in full force, except as to the said \$].

3. (*Shew why execution has not been issued sooner.*)

4. (If the judgment is twenty years old, the affidavit must state payments of principal or interest on account of it, or a written acknowledgment of it within twenty years.)

5. No change has taken place by death or otherwise in the parties entitled and liable to execution upon the said judgment (or if any change has taken place, the nature of the change must be stated).

6. I am [*or, the said A.B. is*] entitled to have execution of the said judgment and to issue execution thereon for the sum of \$ _____, as I am advised and verily believe.

1060

Order for an issue as to liability of a person as a partner in a firm.

(*Formal parts, as in No. 902.*)

1. It is ordered that the plaintiff and the said *P.P.* do proceed to the trial of an issue in this Court in which the plaintiff shall be plaintiff, and the said *P.P.* shall be defendant, and that the question to be tried shall be whether the said *P.P.* was at the time of the accruing of the debt the subject of this action liable as a partner in the firm of .

2. And it is further ordered that the said issue be prepared by the plaintiff and delivered within 10 days, and be returned by the defendant therein within 7 days, and be tried at .

3. And it is further ordered that the question of costs and all further questions be reserved until after the trial of the said issue.

(*Style of Issue.*)

Issue.

The plaintiff affirms and the defendant denies that the defendant was at the date when the said goods were sold and delivered a partner in the firm of , or is liable as a partner therein in respect to (*as the case may be*).

(*Formal parts, as in No. 403.*)

1061

Notice of motion to stay execution and other proceedings.

On the part of the defendant that execution upon the judgment in this action, dated the day of 19 , and all other proceedings in this action may be stayed.

(*Formal parts, as in No. 403.*)

1062

Notice of motion to stay execution pending appeal.

On behalf of the that the time limited by the judgment [*or, order*] dated the day of , 19 , for the applicant to (*state what is directed by the judgment or order to be done*) may be extended for weeks, and that in the meantime execution of the said judgment [*or, order*] may be stayed.

(*Formal parts, as in No. 403.*)

1063

Notice of motion to extend the time for obeying a judgment.

On behalf of the that execution of the judgment [*or, order*] in this action, dated the day of 19 , may be stayed pending the appeal of the therefrom to [the Court of Appeal].

SECTION III.—WRITS OF EXECUTION AND LEVY THEREUNDER.

Writ of Fieri Facias. (Rule 843.)

In the High Court of Justice.

1064
Writ of *Fieri*
Facias. (a)Between—*A.B.*, Plaintiff,
and*C.D.*, and others, Defendants.

Edward the Seventh, by the Grace of God, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India,

To the Sheriff of _____, greeting:

We command you that of the goods and chattels and lands and tenements in your bailiwick [of *C.D.*, or where the execution debtor is a firm, substitute after “tenements” the following “of (describing the firm as in the judgment or order) and (in the case mentioned in Rule 228) of the goods and chattels and lands and tenements of *A.B.*, a partner in the firm of _____,”] [where the execution debtor is a married woman insert here being her separate property* and not subject to any restriction against anticipation unless by reason of section 20 (a) of The Married Women’s Property Act, such property shall be liable to execution notwithstanding such restriction where the judgment is for an ante-nuptial debt, it should provide that the execution be against separate property, whether subject to any restriction against anticipation or not, and the execution will follow the judgment and proceed after* whether subject to any restriction against anticipation or not] you cause to be made the sum of \$ _____ and also interest thereon from the _____ day of _____ (day of the judgment or order, or day on which the money is directed to be paid, or day from which interest is directed by the order to run, as the case may be), which said sum of money and interest were lately before the Justices of our High Court of Justice in a certain action [or, certain actions, as the case may be] wherein *A.B.* is plaintiff, and *C.D.* and others are defendants [or, in a certain matter there depending intituled “In the matter of *E.F.*,” as the case

(a) Con. Rules, 1897, Form 166.

Issued from the office of the
High Court of Justice, in the County of
(Signature of officer.)

may be] by a judgment [*or, order, as the case may be*] of our said Court, bearing date the day of , adjudged [*or, ordered, as the case may be*], to be paid by the said C.D. to A.B., and also the further sum of \$ for the taxed costs of the said A.B., mentioned in the said judgment [*or, order, as the case may be*], together with interest thereon from the day of (*the date of the certificate of taxation. The writ must be so moulded as to follow the substance of the judgment or order*), and that you have before our Justices aforesaid, at Toronto, so much of that money as you shall have made from the said goods and chattels immediately after the execution hereof, and so much thereof as you shall have made from said lands and tenements immediately after the expiration of twelve months from the day of your receipt hereof, to be paid to the said A.B. in pursuance of the said judgment [*or, order, as the case may be*]. And in what manner you shall have executed this our writ make appear to our Justices aforesaid at Toronto immediately after the execution thereof. And have there then this writ.

Witness, the Honourable , President of our said Court, this day of , 19 , and in the year of our reign

Con. Rules, 1888, Form 188.

Indorsements.

The is entitled to receive for this and other writs and every renewal of the same, the following sums, which include placing the same in the sheriff's hands, and all attendances, indorsements, letters, &c., viz.:

(Signature of officer.)

For this writ, \$6.

For 1st renewal,

For 2nd renewal,

&c., &c., (*as may be necessary*).

Levy \$ and \$ for costs of execution, &c., and also interest on \$ at six (b) per centum per annum

(b) Now "five." See 63-4 V., c. 29 (D.)

from the day of , 19 , until payment; besides sheriff's poundage, officer's fees, costs of levying, and all other legal incidental expenses.

(Signature of Solicitor.)

This writ was issued by
of
agent for
of
solicitor for the

Con. Rules, 1888, Form 189.

Fieri Facias against a Married Woman and another.

[Title, &c., as in No. 1064.]

We command you that of the goods and chattels and lands and tenements in your bailiwick of *C.D.*, and also of the goods and chattels and lands and tenements in your bailiwick of *E.F.*, being her separate property, and not subject to any restriction against anticipation unless by reason of section 20 (a) of The Married Women's Property Act, such property shall be liable to execution notwithstanding such restriction, &c., &c. [as in the preceding form].

(Place of issue in margin. Indorsements as in Form 1064.)

Fi fa. against an Executor or Administrator on a Judgment de bonis testatoris et si non, &c., de bonis propriis as to the Costs.

[Title, &c., as in No. 1064.]

Edward the Seventh, &c.

To the Sheriff of , greeting:

We command you that of the goods and chattels and lands and tenements in your bailiwick, which were of *C.D.*, deceased, at the time of his death in the hands of *E.F.*, executor of the last will and testament [or, administrator of the estate and effects] of the said *C.D.*, to be administered, you

1065

Fi. Fa. against a married woman and another. (b)

1066

Writ of Fi. Fa. against an executor, etc. (c)

(b) Con. Rules, 1897, Form 167.

(c) Con. Rules 1897, Form 168.

cause to be made the sum of \$ and also interest at the rate of six (a) per centum per annum, from the day of , 19 , which said sum of money and interest were lately before the Justices in our High Court of Justice, in a certain action wherein *A.B.* is plaintiff, and *E.F.*, as such executor [*or*, administrator] as aforesaid, is defendant, by a judgment of our said Court, bearing date the day of , 19 , adjudged to be paid by the said *E.F.*, as executor [*or*, administrator] as aforesaid of the said *C.D.* And further, that of the goods and chattels and lands and tenements in your bailiwick which were of *C.D.*, deceased, at the time of his death in the hands of *E.F.* as executor [*or*, administrator] as aforesaid to be administered, if the said *E.F.* has so much in his hands to be administered you further cause to be made the sum of for the taxed costs of the said *A.B.*, mentioned in the said judgment, together with interest thereon at the rate of six (a) per centum per annum from the day of , 19 , and that if he has not so much, then that you cause to be made of the proper goods and chattels and lands and tenements in your bailiwick of the said *E.F.*, the said sum of , together with interest thereon as aforesaid, and that you have before us in our said Court so much of that money and interest as you shall have made from said goods and chattels, immediately after the execution hereof, and so much thereof as you shall have made from said lands and tenements immediately after the expiration of twelve months from the day of your receipt hereof to be paid to the said in pursuance of the said judgment. And in what manner you shall have executed this our writ make appear to us in our said Court immediately after the execution hereof. And have there then this writ.

Witness the Honourable , President of our said Court, at Toronto, this day of , 19 , and in the year of our reign.

(Indorsements as in Form 1064.)

(a) Now "five." See 63-4 V., c. 29 (D.)

Fieri Facias on a Judgment or Order for Costs.

[Title, &c., as in No. 1064.]

Edward the Seventh, &c.

To the Sheriff of _____, greeting:

We command you that of the goods and chattels and lands and tenements of _____ in your bailiwick you cause to be made the sum of _____ for certain costs which by [a judgment, or, an order] of our High Court of Justice dated the _____ day of _____, 19____, [adjudged or, ordered] to be paid by the said _____ to _____ and which have been taxed and allowed at the said sum, and interest on the said sum at the rate of six (c) per centum per annum from the _____ day of _____, 19____, [the date of the certificate of taxation] and that you have before the Justices of our High Court at Toronto so much of the said sum and interest as you shall have made from the said goods and chattels, immediately after the execution hereof, and so much thereof as you shall have made from the said lands and tenements immediately after the expiration of twelve months from the day of your receipt hereof, to be rendered to the said _____. And in what manner you shall have executed this our writ make appear to us immediately after the execution hereof. And have there then this writ.

Witness, &c., _____ the _____ day of _____ 19____.

(Place of Issue in margin, and indorsements as in Form 1064.)

Fieri Facias against a Garnishee. (Rules 914, &c.)

Between _____

Plaintiff,
and
Garnishee.**1068***Fi. Fa.*
against gar-
nishee. (d)

Edward the Seventh, &c.

To the Sheriff of _____, greeting:

We command you that of the goods and chattels and lands and tenements of _____ in your bailiwick you cause to be made the sum of _____ and also interest thereon from the _____ day of _____, A.D. 19____, which said money and interest were lately attached in the hands of the said _____

(b) Con. Rules, 1897, Form 169.

(c) Now "five." See 63-4 V., c. 29 (D.)

(d) Con. Rules, 1897, Form 170.

(*garnishee*) by an order of the bearing date the day of , A.D. 19 , to satisfy a certain judgment [*or, order*] which (*judgment creditor*) lately in our High Court of Justice recovered [*or, obtained*] against the said (*judgment debtor*) as appears of record, and that you have before the Justices of our said Court at Toronto so much of that money and interest as you shall have made from said goods and chattels immediately after the execution hereof, and so much as you shall have made from said lands and tenements, immediately after the expiration of twelve months from the day of your receipt hereof, to be paid to the said (*judgment creditor*) in pursuance of the said . And in what manner you shall have executed this our writ make appear to our said Justices at Toronto immediately after the execution hereof. And have there then this writ.

Witness, &c.

(*Place of issue in the margin, and indorsements as in Form 1064.*)

Writ of Venditioni Exponas after a Certificate or Return of Goods or Lands on hand to full Amount Unsold for want of Buyers. (Rules 845 and 883.)

[*Title, &c., as in No. 1064.*]

1069

Writ of
Ven. Ex. (a)

Edward the Seventh, &c.

To the Sheriff of , greeting:

Whereas by our writ we lately commanded you that of the goods and chattels and lands and tenements in your bailiwick of *C.D.* [*here recite the fieri facias as in Form 1064*]. And on the day of you [*certified or returned*] to our Justices of our High Court of Justice aforesaid, that by virtue of the said writ to you directed you had taken goods and chattels [*or, lands and tenements*] of the said *C.D.* to the value of the money and interest aforesaid, which said goods and chattels [*or, lands and tenements*] remained in your hands unsold for want of buyers, and that therefore you could not have that money before our Justices aforesaid, as you were thereby commanded. Therefore, we being desirous that the said *A.B.* should be satisfied his money and interest aforesaid, command you that you expose to sale and sell, or cause

to be sold, the goods and chattels [*or, lands and tenements*] of the said *C.D.*, so by you taken as aforesaid, and every part thereof, for the best price that can be gotten for the same, and have the money arising from such sale before our Justices aforesaid, at Toronto, immediately after the execution hereof, to be paid to the said *A.B.* And have there then this writ.

Witness, &c., , the day of , 19 , and in the
year of our reign.

Con. Rules, 1888, Form 190.

(*Place of issue in margin, and indorsements as in Form 1064.*)

Ven. Ex. for Part, and Fi. Fa. Residue. (*Rules 845 and 883.*)

[*Title, &c., as in No. 1064.*]

Edward the Seventh, &c.

To the Sheriff of , greeting:

Whereas, by our writ we lately commanded you that of the goods and chattels and lands and tenements of in your bailiwick you should cause to be made the sum of , and also the interest thereon, from the day of A.D. 19 , which said sum of money and interest lately before the Justices of our High Court of Justice, in a certain action, wherein plaintiff, and defendant, by a judgment of our said Court, bearing date the day of , A.D. 19 , were adjudged to be paid by the said to the said and also for taxed costs in the said judgment mentioned together with interest thereon, from the said day of A.D. 19 , and that you should make to appear before our Justices aforesaid, at Toronto, immediately after the execution thereof in what manner you had executed our said writ; and you at a day now past certified [*or, returned*] to us in our High Court of Justice, that by virtue of the said writ you have taken [*goods and chattels or lands and tenements*] of the said to the value of , parcel of the said several sums of money and interest therein

1070

*Ven. Ex. for
part and Fi.
Fa. residue. (b)*

office of the High
 Count
 of the
 Issued from the
 Court of Justice, in

mentioned, which [goods and chattels *or* lands and tenements] remained in your hands for want of buyers, and that therefore you could not have that money before our Justices aforesaid, as you were thereby commanded, and that the said had not any other or more [goods and chattels *or* lands and tenements] in your bailiwick whereof you could cause to be made the residue of the moneys and interest aforesaid, or any part thereof; therefore we, being desirous that the said should be satisfied the said sums of money and interest, command you that you expose to sale, and sell, or cause to be sold, the said [goods and chattels *or* lands and tenements] of the said so by you taken as aforesaid, for the best price that can be got for the same, and have the said sum of parcel of the moneys and interest aforesaid arising from such sale, and any further or other moneys before our Justices aforesaid, immediately after the execution hereof, to be rendered unto the said

If the writ and not merely a certificate has been returned a fi fa. residue may be added to the writ of ven. ex. as follows:

[And we also command you, that of the goods and chattels and lands and tenements of the said in your bailiwick, you cause to be made the sum of residue of the moneys and interest aforesaid; and have before our Justices aforesaid so much of such residue as you shall have made from said goods and chattels immediately after the execution hereof, and so much thereof as you shall have made from said lands and tenements immediately after the expiration of twelve months from the day of your receipt hereof, to be rendered to the said for the residue of the moneys aforesaid.]

And in what manner you shall have executed this our writ make appear to our Justices aforesaid at Toronto, immediately after the execution hereof, and have there then this writ.

Witness, the Honourable
 said Court, the day of
 year of our reign.

President of our
 A.D. 19 , in the

(Indorsements as in Form 1064.)

Fi. Fa. Residue.[*Title, &c., as in No. 1064.*]

Edward the Seventh, &c.

1071
Fi. Fa.
residue. (a)

To the Sheriff of , greeting:

Whereas, by our writ we lately commanded you that of the goods and chattels and lands and tenements of in your bailiwick you should cause to be made the sum of together with interest thereon from the day of A.D. 19 ; and also the further sum of for the taxed costs of the said together with interest thereon from the day of A.D. 19 ; which said several sums of money and interest were lately in our High Court of Justice, before the Justices of our said Court at Toronto, by a judgment of our said Court, bearing date the day of A.D. 19 , adjudged to be paid by the said to the said , as appears of record, and that you should have that money before our Justices aforesaid at Toronto immediately after the execution thereof to be rendered to the said . And you returned to our Justices aforesaid, that by virtue of the said writ to you directed, you had caused to be made of the goods and chattels and lands and tenements of the said in your bailiwick the sum of parcel of the moneys aforesaid, which money you had ready, as by the said writ you were commanded, and that the said had not any other or more goods and chattels and lands and tenements in your bailiwick, whereof you could cause to be made the residue of the moneys aforesaid. Therefore, we command you, that you cause to be made of the goods and chattels and lands and tenements of the said in your bailiwick the sum of residue of the moneys aforesaid, and have before our Justices aforesaid at Toronto, so much of that money and interest as you shall have made from said goods and chattels immediately after the execution hereof, and so much as you shall have made from said lands and tenements immediately after the expiration of twelve months from the day of your receipt hereof, to be rendered to the said for the residue of moneys aforesaid. And in what manner you shall have executed this our writ make appear to our Justices aforesaid at Toronto immediately after the execution hereof, and have there then this writ.

Witness, the Honourable President of our
said Court at Toronto, the day of in the year
of our Lord one thousand nine hundred and
and in the year of our reign.

(Indorsements as in Form 1064.)

1072

Alias writ.

Edward the Seventh, &c. To the Sheriff of

Greeting:

We command you, as we have before commanded you, &c.
(as in Form of the writ first issued).

1073

Pluries writ.

Edward the Seventh, &c. To the Sheriff of

Greeting:

We command you, as often times we have commanded
you, &c. *(as in Form of the writ first issued).*

1074

Bond to the
Sheriff.

Know all men by these presents, that we, are jointly
and severally held and firmly bound unto , Esquire,
Sheriff of the of , in the sum of lawful money of
Canada, to be paid to the said Sheriff, or his certain attor-
ney, executors, administrators, or assigns, for which pay-
ment to be well and faithfully made, we bind ourselves, and
each of us himself for the whole, and every part thereof, and
the heirs, executors, and administrators of us, and every [or,
each] of us, firmly by these presents. Sealed with our seals,
dated this day of in the year of our Lord one thousand
nine hundred and

The condition of this obligation is such, that if the goods
and chattels hereinunder mentioned, levied on by the Sheriff
of the aforesaid on execution issued out of the
at the suit of against be forthcoming whenever requir-
ed by the said Sheriff, his deputy, or authorized bailiffs, then
this obligation to be null and void, otherwise to remain in full
force and effect. And be it known, that it shall and may be
lawful for the said Sheriff, his deputy, or authorized bailiffs
at any time, even before or after the return day of the writ

on which said goods are levied, to enter the premises, and remove and sell the said goods, to satisfy the said execution, costs, expenses, and fees, without being subject to any action for trespass or damages.

Signed, sealed and delivered, }
in the presence of }

1075

Know all men by these presents that [we] of (*execution creditor and sureties, if any*) held and firmly bound unto X.Y. Sheriff of the County of in the penal sum of of lawful money of Canada, to be paid to the said X.Y. his executors, administrators or assigns for which payment well and truly to be made bind [ourselves and each of us himself and our] heirs, executors and administrators, and every of them firmly by these presents, sealed with seal

Bond to indemnify Sheriff for selling under a *Fieri Facias*.

Dated this day of A.D. 19 .

Whereas the above-named X.Y. as Sheriff of the County of by virtue of a writ of *feri facias* to him directed, issued at the suit of A.B. out of [the High Court of Justice for Ontario] whereby he was to cause to be made of the goods and chattels, and lands and tenements of C.D., the sum of \$, and also interest thereon, hath seized and taken in execution divers goods and chattels as the proper goods and chattels of the said C.D.

And whereas since the seizing and taking of the same as aforesaid the said goods and chattels have been claimed by one E.F., who has given notice to the said Sheriff not to proceed to a sale of the same (*according to the notice*).

And whereas the said A.B. having been notified of such claim has requested the said Sheriff to sell the said goods and chattels under and by virtue of the said writ, notwithstanding such claim and notice, and to pay to the said A.B. the moneys arising from the sale thereof in satisfaction of the moneys directed to be levied by the said writ, which the said Sheriff has consented to do upon being indemnified for so doing.

Now the condition of the above-written obligation is such that if the above bounden A.B., his heirs, executors or administrators do and shall at all times hereafter well and sufficiently save harmless and keep indemnified the said Sheriff, his heirs, executors and administrators, and his deputy and

officers, and each and every of them of, from, and against, all losses, costs, charges, damages and expenses which he or they shall or may sustain, suffer, bear, pay, expend or be put to for or by reason or means of seizing or selling the said goods and chattels so seized and taken in execution as aforesaid, or paying unto the said *A.B.* the money arising from the sale thereof in satisfaction of the moneys directed to be levied by the said writ, and also of, from, and against all action and actions, proceeding or proceedings which are now or shall or may at any time hereafter be brought, commenced or prosecuted rightfully or wrongfully against the said Sheriff, his heirs, executors or administrators, or his deputy, or officers or any of them for or on account or by reason or means of the seizing or selling of the said goods and chattels under the said writ or paying unto the said *A.B.*, the money arising from the sale thereof as aforesaid or for or by reason of or means of any other act, matter, cause or thing whatsoever relating thereto or to the execution of the said writ, then the above-written obligation to be void, otherwise to be and remain in full force and effect.

Signed, sealed and delivered }
in presence of }

1076

Condition of
bond of in-
demnity to
Sheriff for
abandoning
goods and re-
turning *nulla*
bona.

Whereas the above-named Sheriff by virtue of a writ of *fieri facias* directed to him against the goods and chattels of *C.D.*, issued out of [the High Court of Justice for Ontario] at the suit of one *A.B.*, hath seized and taken in execution divers goods and chattels as and for the goods and chattels of the said *C.D.* And whereas the above bounden *E.F.* has given notice to the said Sheriff and claimed the said goods and chattels, and has requested the said Sheriff to quit possession of and abandon and deliver up the same to the said *E.F.*, and to make his return to the Court when called on so to do that the said *C.D.* had not any goods or chattels in his bailiwick [other than *according to the fact if there were other goods*] which the said Sheriff has consented to do on the said *E.F.* indemnifying him for so doing. Now the condition of the above-written obligation is such that if the above bounden *E.F.*, his heirs, executors and administrators do and shall at all times hereafter well and sufficiently save harmless and keep indemnified the said Sheriff, his heirs, executors and administrators, and his deputy and officers and each and every of them of and from and against all losses

costs, charges, damages, and expenses which he or they shall or may sustain, suffer, bear, pay, expend, or be put to, for or by reason or means of quitting possession, of abandoning and delivering to the said *E.F.* the said goods and chattels so seized as aforesaid and making the return aforesaid; and also of, from, and against all action and actions, proceeding and proceedings, which now are or shall or may at any time hereafter be brought, commenced or prosecuted rightfully or wrongfully by the said *A.B.*, or by any person or persons whomsoever against the said Sheriff, his heirs, executors or administrators, or his deputy, or officers, or any of them for or on account or by reason of the quitting possession or abandoning and delivering to the said *E.F.*, the said goods and chattels and making the return aforesaid, or for or by reason of any other act, matter or thing whatsoever relating thereto, or to the execution or return of the said writ of *fiery facias* then the said obligation to be void, otherwise to be and remain in full force and effect.

See infra, No. 1233.

1077

Notice by
Sheriff of
claim to goods
seized.

See infra, No. 1234.

1078

Notice to
Sheriff of ad-
mission or dis-
pute of title of
the claimant.

Sheriff's Notice.

Notice is hereby given that I have by virtue of certain executions delivered to me against the goods and chattels and lands and tenements (*or as the case may be*) of *C.D.* levied and made out of the property of the said *C.D.* the sum of \$.

1079

Notice of levy
under the
Creditor's Re-
lief Act. (a)

And notice is further given that this notice is first posted in my office on the day , 19 , and that distribution of the said money will be made among the creditors of the said *C.D.* entitled to share therein at the expiration of one month from the said day of , 19 .

F.G.

Sheriff.

(a) See R. S. O. 1897 c. 78 s. 4 (2), and Sched. Form A.

*Notice of Renewal of Writ of Fieri Facias. (Rule 872.)***1080**

Notice of re-
newal of writ
of *fi. fa.* (a)

In the High Court of Justice.

Between Plaintiffs,
and
Defendant.

Take notice, that the writ of issued in this action directed to the Sheriff of and bearing date the day of , 19 , has been renewed for three years from the day of , 19 .

Dated this day of 19 .

(Signed)

Solicitor for the

To the Sheriff of

Con. Rules, 1888, Form 31.

Writ of Possession. (Rule 846.)

(Title, &c., as in No. 1064.)

1081

Writ of pos-
session. (b)

Edward the Seventh, &c., to the Sheriff of Greeting:

Whereas lately by a judgment in our High Court of Justice [*A.B.* recovered, or, *E.F.* was ordered to deliver to *A.B.*] possession of all and singular that with the appurtenances in your bailiwick: Therefore, we command you that you enter the same, and without delay cause the said *A.B.* to have possession of the said land and premises with the appurtenances, and that you defend and keep him and his assigns in peaceable and quiet possession when and as often as any interruption may or shall, from time to time, be given or offered to him or them or any of them. Witness, &c.

[Where money or costs are also recoverable by the judgment, a writ of fieri facias may be combined with the writ of possession.]

(Place of issue in the margin, as in Form 1064.)

(Indorsement. This writ was issued, &c., as in Form 1064.)

Con. Rules, 1888, Form 191.

*Writ of Delivery. (Rule 852.)**(Title, &c., as in No. 1064.)*

Edward the Seventh, &c., to the Sheriff of Greeting: **1082**
Writ of delivery. (c)

We command you, that without delay you cause the following chattels, that is to say (*here enumerate the chattels recovered by the judgment for the return of which execution has been ordered to issue*), to be returned to A.B.) which the said A.B. lately in our High Court of Justice recovered against C.D. [*or, C.D. was ordered to deliver to the said A.B.*] by a judgment [*or, order*] in an action in our said Court bearing date the day of , A.D. 19 .^{*} And we further command you, that if the said chattels cannot be found in your bailiwick, you distrain the said C.D., by all his lands and chattels in your bailiwick, so that neither the said C.D., nor any one for him do lay hands on the same until the said C.D. render to the said A.B. the said chattels; and in what manner you shall have executed this our writ make appear to the Justices of our said Court at Toronto, immediately after the execution hereof, and have you there then this writ. Witness, &c. Distringas.

(Place of issue in margin, and indorsement as in Form 1081.)

Con. Rules, 1888, Form 192.

The Like, but instead of a Distress until the Chattels are returned, commanding the Sheriff to levy on the Defendant's goods the assessed Value of the Chattels.

[Proceed as in the preceding Form to the, and then thus:]*

And we further command you that if the said chattels cannot be found in your bailiwick, then of the goods and chattels and lands and tenements of the said C.D. in your bailiwick you cause to be made the sum of (*the assessed value of the chattels*) and interest thereon from the day of 19 , which by the said [*judgment or order*] of the said Court were to be paid by the said C.D. to the said A.B. for the value of the said goods and chattels in such case. *Where damages and costs are awarded add,* And we also command **1083**
Writ of delivery or value. (d)

(c) Con. Rules, 1897, Form 175.

(d) Con. Rules, 1897, Form 176.

you that of the goods and chattels and lands and tenements of the said *C.D.* in your bailiwick, you cause to be made the sum of _____, which by the said judgment [*or, order*] were directed to be paid by the said *C.D.* to the said *A.B.* for the damages and costs (*or as the case may be*) together with interest upon the said sum at the rate of six (*a*) per centum per annum from the _____ day of _____ 19____, and that you have before the Justices of our said Court at Toronto so much of the said sums and interest as you shall have made from the said goods and chattels immediately after the execution hereof, and so much thereof as you shall have made from the said lands and tenements immediately after the expiration of twelve months from the day of your receipt hereof, to be paid to the said *A.B.*, and in what manner you shall have executed this our writ make appear to the Justices of our said High Court of Justice at Toronto, immediately after the execution hereof, and have you there then this writ. Witness, &c.

(*Place of issue in the margin, and indorsement as in Form 1064.*)

Con. Rules, 1888, Form 193.

Writ of Assignment of Dower. (Rule 850.)

[*Title, &c., as in No. 1064.*]

1084

Writ of assignment of dower in action. (*b*)

Edward the Seventh, &c., _____ to the Sheriff of, &c.

Whereas it has been made to appear to us in an action in our High Court of Justice that *C.D.* is the owner of (*describe the lands*) out of which dower is claimed by *A.B.*, and it has been adjudged by the judgment of our said Court in said action bearing date the _____ day of _____, A.D. 19____, that the said *A.B.* is entitled to her proper dower out of the said lands [and also to recover from the said *C.D.* the sum of _____ for damages for the detention of her dower].

We therefore command you that without delay you do deliver to the said *A.B.* seisin of her third part of the said lands with the appurtenances. To hold to her in severalty by metes and bounds and that you do proceed in the execution in that respect of this our writ according to the provisions of "The Dower Procedure Act."

[*A fi. fa. for recovery of the damages and costs, if any awarded by the judgment, may be combined with this writ.*]

(*Place of issue in the margin, and indorsement as in Form 1064.*)

(*a*) Now "five." See 63-4 V., c. 29 (D.)

(*b*) Con. Rules, 1897, Form 183.

Writ of Assignment of Dower under Rule 959 where the right of Dower is acquiesced in by the owner of the estate.

(Rules 851, 959.)

ONTARIO

County of Edward the Seventh, by the Grace of God, &c.

1085

The same
without ac-
tion. (c)

To the Sheriff of the County of Greeting:

Whereas, *A.B.*, widow, who was the wife of *C.B.*, deceased, demands against *E.F.*, the third part of (*here describe the estate in which dower is claimed as in other writs of assignment of dower*) as the dower of the said *A.B.* of the endowment of the said *C.B.*, heretofore her husband. And whereas it has been made to appear to us in our High Court of Justice that the said *E.F.* is the owner of the said real estate out of which said dower is claimed, and that he acquiesces in the said claim and is willing to assign to the said *A.B.* her proper dower, but that the said *A.B.* and *E.F.* are not agreed as to the admeasurement thereof. We therefore command you that, without delay, you do deliver the said *A.B.* seisin of her third part of the said with the appurtenances: To hold to her in severalty by metes and bounds; And that you do proceed in the execution of this our writ, according to the provisions of "The Dower Procedure Act."

Witness, &c.

(*When the plaintiff has married again, since the death of her late husband, under whom she claims dower, her name and description must be made such as to suit her circumstances.*)

(*Place of issue in the margin, and indorsement as in Form 1064.*)

Con. Rules, 1888, Form 201.

(*Formal parts: as in No. 902.*)

1086

It is ordered that the plaintiff be at liberty to issue out of this Court a writ, and one or more concurrent writs of *capias ad satisfaciendum* as may be required upon the judgment recovered in this action directed to the Sheriff of the County of , and to the Sheriff or Sheriffs of such other County or Counties as may be required.

Order for a
writ of *Capias*
ad Satisfaciendum.

(c) Con. Rules, 1897, Form 184.

Writ of Capias ad Satisfaciendum on a Judgment for Plaintiff (where defendant has not previously been arrested).

(Title, &c., as in No. 1064.)

1087

Writ of *Ca. Sa.* where defendant not previously arrested. (a)

Edward the Seventh, &c., to the Sheriff of , greeting:

Whereas (insert if necessary any recitals which under the order may be proper).

We command you that you take *C.D.* if he shall be found in your bailiwick, and him safely keep so that you may have his body before our Justices of our High Court of Justice at Toronto, immediately after the execution hereof, to satisfy the sum of ,* (the amount to be recovered by the judgment) which lately in our High Court of Justice by a judgment bearing date the day of , A.D. 19 , were adjudged [or, ordered] to be recovered [or, paid] by the said *A.B.* against [or, by] the said *C.D.* for damages [where costs also payable add, together with the further sum of \$ for the taxed costs of the said *A.B.* as mentioned in said judgment]. And have you then there this writ. Witness, &c., (as in usual form).

[In the margin.]

This writ of *capias ad satisfaciendum* is issued from the office, &c., &c., pursuant to special order of

Dated the day of A.D.

G.H.

Clerk of *C. & P.*, or Clerk of *R. & W.*
or, Local Registrar or other proper officer.

N.B.—This writ is to be in force for two months from the date hereof and no longer.

Indorsement. This writ was issued, &c., as (in Form 1064).

Con. Rules, 1888, Form 195.

The like Writ of Capias ad Satisfaciendum on an order for Payment of Money. (Rule 1051.)

(Title, &c., as in No. 1064.)

1088

Writ of *Ca. Sa.* on order for payment of money. (b)

Edward the Seventh, &c. (same as in Form No. 1087 to the*) which lately in our High Court of Justice by an order of

(a) Con. Rules, 1897, Form 178.

(b) Con. Rules, 1897, Form 179.

our said Court [*or, by an order of the Honourable* , one of the Justices of our said High Court of Justice, *or as may be*] dated the day of , 19 , was ordered to be paid by the said *C.D.* to *A.B.* And have you then there this writ. Witness, &c.

(*Place of issue in margin, N.B. and indorsement as in Form 1087.*)

Con. Rules, 1888, Form 196.

The like Writ of Capias ad Satisfaciendum on an order for Payment of Money and Costs. (Rule 1051.)

(*Title, &c., as in No. 1064.*)

Edward the Seventh, &c. (*same as No. 1088 down to the words "was ordered"*) to be paid by the said *C.D.* to the said *A.B.*, together with certain costs in the said order mentioned, which said costs have been taxed and allowed by our said Court at , (*the amount of the allocatur or allocaturs, if more than one*), and further to satisfy the said *A.B.* the said last mentioned sum. And have you then there this writ. Witness, &c.

(*Place of issue in margin, N.B. and indorsement as in Form 1087.*)

Con. Rules, 1888, Form 197.

Writ of Capias ad Satisfaciendum on a Judgment for Plaintiff (where Defendant has been previously arrested and has given security) to fix the Liability of Sureties. (Rule 1052.)

(*Title, &c., as in No. 1064.*)

Edward the Seventh, &c., to the Sheriff of, &c.

We command you that you take *C.D.* if he shall be found in your bailiwick, and him safely keep so that you may have his body before our Justices of our High Court of Justice at Toronto within days after the day of your receipt hereof to satisfy, &c. (*following Form 1087*).

(*In the margin.*) This writ of *capias ad satisfaciendum* is issued from the office of, &c.

(*Indorsement as in Form 1087.*)

1089

Writ of *Ca. Sa.*
money and
costs. (c)

1090

Ca. Sa. where
defendant
previously
arrested. (d)

(c) Con. Rules, 1897, Form 180.

(d) Con. Rules, 1897, Form 181.

1091

Indorsement
on *Ca. Sa.*

Mr. Sheriff

Levy the whole amount within mentioned [or, \$] and interest thereon [or, on \$] from the day of , and \$ for this writ besides your poundage fees, and expenses.

1092

Writ of Super-
seas to a Ca.
Sa.

Edward the Seventh, &c., To the Sheriff of the County
Greeting:

Whereas we lately commanded you by our writ that you (*reciting so much of the writ as may be necessary*), as in the said writ is more fully contained: Nevertheless, because after the issuing of the said writ it appeared to our said Court that (*according to the fact, e.g., the said writ was issued erroneously*) therefore we command you that if the said *C.D.* be detained in your custody for that cause and no other, then you suffer him to go at large as you will answer the contrary at your peril.

1093

Return of *Cepi*
Corpus.

I have taken the within named *C.D.* whose body I have ready as within commanded.

The answer of Sheriff.

1094

Return of *Non est Inventus*.

The within named *C.D.* is not found in my bailiwick.

The answer of Sheriff.

1095

Return of
Languidus,
&c.

By virtue of the within writ I took the within named *C.D.* at a dwelling house situate in the of in my County , but the said *C.D.* was then so sick and ill and in so weak, infirm and debilitated a state, that he could not be taken or removed from the said dwelling house to the common gaol of my said County without great peril and danger of his life; and the said *C.D.* for the cause aforesaid was kept and remained and still is kept and remains in my custody in the said dwelling house so sick and ill, and in such a weak, infirm, and debilitated state as aforesaid that I cannot without peril and danger of his life have the body of the

said *C.D.* before the Justices of the High Court of Justice at Toronto as I am within commanded.

The answer of

Sheriff.

(*Formal parts: see No. 403.*)

For an order that a writ of sequestration be issued out of this Court to sequester the goods, chattels, and personal estate and the rents, issues, and profits of the real estate of the defendants, the company [*or, of A.B., C.D. and E.F., directors of the defendants, the company*] for contempt of this Court in wilfully disobeying the judgment [*or, order*] of this Court herein dated the day of , 19 , whereby (*set out the directions of the judgment or order disobeyed*), *or as the case may be.*

1096

Notice of
motion for a
writ of seques-
tration.

Writ of Sequestration.

(*Title, &c., as in No. 1064.*)

Edward the Seventh, &c., to the Sheriff of , Greeting:

1097

Writ of se-
questration

Whereas lately in our High Court of Justice in a certain ^(a) action there depending, wherein *A.B.* [*is*] plaintiff and *C.D.* is [*or, and others are*] defendants [*or, in a certain matter there depending intituled "in the matter of E.F., as the case may be"*] by a judgment [*or, order, as the case may be*] of our said Court made in the said action [*or, matter*], and bearing date the day of , 19 , it was ordered that the said *C.D.* should [pay into Court to the credit of the said action the sum of ; *or as the case may be*]. Know ye, therefore, that we have given, and by these presents do give to you full power and authority to enter upon all the lands, tenements, and real estate, whatsoever of the said *C.D.*, and to collect, receive and sequester in your hands, not only all the rents and profits of his said lands, tenements and real estate but also all his goods, chattels, and personal estates whatsoever; and therefore we command you, that you do at certain proper and convenient days and hours, go to and enter upon all the lands, tenements and real estates of the said *C.D.*, and that you do collect, take and get into your hands not only

(a) Con. Rules, 1897, Form 182.

the rents and profits of his said real estate, but also all his goods, chattels, and personal estate, and detain and keep the same under sequestration in your hands until the said *C.D.* shall [pay into Court, to the credit of the said action, the sum of \$ or as the case may be], and clear his contempt, and our said Court make other order to the contrary. Witness, &c.

(Place of issue in the margin, and indorsement as in Form 1064.)

Con. Rules, 1888, Form 199.

1098

Notice to
tenant to
attorn to
sequestrators.

(Court and style of cause as in No. 24 or 25.)

We, *A.B.* and *C.D.*, the sequestrators acting under the sequestration issued in this cause on the day of , 19 , against [the defendant] *E.F.*, hereby give you notice and require you to attorn and become tenant to us for (*describe the property; as thus*: all that farm called The Bourne, situate at , in the County of), and for such other part or parts of the real estate of the said *E.F.*, as is or are in your occupation; and to pay to us your rent in arrear and growing rent for the said premises.

Dated this day of , 19 .

A.B.
C.D.

To *G.H.*, of (*residence and addition*).

1099

Attornment
thereon.

(Court and style of cause as in No. 24 or 25.)

I, *G.H.*, of (*residence and addition*), attorn and become tenant to *A.B.* and *C.D.*, the sequestrators acting under the sequestration issued in this cause on the day of , 19 , against [the defendant] *E.F.*, for all that (*describe the property; see description in last Form*), with the appurtenances, as the same are now in my occupation: to hold the same at and under the same rent, and subject to the same covenants and conditions, as I now hold the same. And I have this day paid to the said *A.B.* and *C.D.* the sum of [one dollar] for and on account, and in part payment of the said rent. Dated this day of , 19 .

Witness:

G.H.

L.M., of (*residence and addition*).

(*Formal parts: see No. 403.*)

on the part of the plaintiff [*or as may be*], that *G.H.*, of **1100**
 (*residence and addition*), may be ordered within [eight] days Notice of
 motion for
 tenant to
 attorn.
 after service, to attorn and become tenant for the (*describe*
the property: see No. 1098), and pay his rent in arrear and
 growing rent for the same to *A.B.* and *C.D.*, the sequestrators
 acting under the sequestration issued in this cause on the
 day of _____, 19____, against the defendant *E.F.*
 And take notice (*as in No. 403.*)

(*Formal parts: see No. 744.*)

1. *Prove service of the notice to attorn: see No. 1098.*

If the service was personal, prove production of the se- **1101**
questration; as thus: 2. At the time of the service aforesaid Affidavit in
 support.
 of the said notice, I shewed to the said (*tenant's name*) the
 writ of sequestration in the said notice mentioned or referred
 to, now shewn to me and marked A.

If the service was not personal, prove service of the
sequestration; as thus: 2. At the time of the service aforesaid
 of the said notice, I served the said (*tenant's name*) with the
 writ of sequestration therein mentioned or referred to, and
 which is now shewn to me and marked "A," by delivering to,
 and leaving with, the said (*state whom*), a true copy of the
 said writ, and of the indorsement thereon; and I at the same
 time shewed to the said (*state whom*), the said original writ.

3. *Prove service of the notice of motion to attorn: see No.*
 1100.

(*Formal parts: see No. 403.*)

that *A.B.* and *C.D.*, the sequestrators acting under the seques- **1102**
 tration issued in this cause on the _____ day of _____, 19____, Notice of
 motion for
 sequestrators
 to account.
 against the defendant *E.F.*, may be ordered to leave their
 accounts in the chambers of the Master at _____ (*or as may*
be), on or before the _____ day of _____, 19____, or within
 [eight] days after service of the order to be made on this ap-
 plication, and at such other times as the Master shall appoint;
 and to pay the balances appearing to be due on their accounts,
 or such part thereof as the said Master shall certify as proper
 to be paid by them, into Court, to the credit of this cause,
 within ten days (exclusive of vacations) after the said Mas-

ter's certificate of the result of such accounts respectively shall become absolute, or at such other periods as they may be directed. And take notice (*as in No. 403*).

(*Formal parts: see No. 403.*)

1103

Notice of motion for an examination, *pro interesse suo*.

on the part of *G.H.*, of (*residence and addition*), that an inquiry may be made whether the said *G.H.* has any and what interest in the real [and personal] estate (*or as may be*), sequestered by *A.B.* and *C.D.*, the sequestrators acting under the sequestration issued in this cause on the day of , 19 , against [the defendant] *E.F.*, or in any or what part thereof. And take notice that on, &c. (*Conclude as in No. 403.*)

Special Contempts.

(*Formal parts: see No. 403.*)

1104

Notice of motion, by an officer, suitor, or witness to be discharged from custody, where protected from arrest.

on the part of *A.B.*, of (*residence and addition*), one of the solicitors of this Honourable Court (*or as may be*), that, on the ground of privilege, he may be discharged out of the custody of the Sheriff of (*or as may be*), in respect of an attachment issued against him on the day of , 19 , for breach of the order dated the day of , 19 , in not (*describe act of disobedience for which attachment issued*), the said *A.B.* having been, at the time of the arrest, on his way to attend the trial of this action at, &c., as solicitor on behalf of, &c. (*or as may be*).

And that the said *C.D.*, and *E.F.*, Esquire, the said Sheriff, and *G.H.*, his officer, may be ordered to pay to the said *A.B.* his costs occasioned by the execution of the said attachment, and of this application and consequent thereon. And take notice (*conclude as in No. 403*).

(*Formal parts: see No. 403.*)

1105

Notice of motion to dissolve sequestration.

On the part of the defendant *C.D.* (*or as may be*).

1. That the writ of sequestration issued against the (*applicant*) on the day of , 19 , for not

obeying the judgment [*or, order*] dated the day of ,
19 , may stand dissolved.

2. That the costs of the [*plaintiff, or other person issuing the writ*], and the costs, charges and expenses of the sequestrators acting under the said writ of and incidental to the sequestration, including therein all usual and proper allowances to the said sequestrators in behalf of their office, and their costs of this application and of and incidental thereto be taxed as between solicitor and client (in case the parties differ about the same) and be respectively paid and retained by the said sequestrators in manner hereinafter mentioned.

3. That *A.B.* and *C.D.*, the sequestrators acting under the said writ, may be ordered to withdraw from possession of the real estate of the (*applicant*) situate at , being the property taken possession of by the said sequestrators under the said sequestration, and from the receipt of the rents and profits thereof within ten days after service of the order to be made on this application.

4. That the said sequestrators may be ordered within the time aforesaid to give notice to the tenants of such withdrawal, and be allowed their costs thereof as between solicitor and client as part of their costs hereinbefore mentioned to be taxed and retained by them.

5. That the said sequestrators may be directed to pay the plaintiff's said costs and be at liberty to retain such costs and their own costs and costs, charges and expenses, when respectively taxed or agreed upon as aforesaid out of the moneys in their lands, and be allowed the same in their accounts as payments properly made by them out of such moneys.

6. That the said sequestrators may be ordered to pay what shall be found due to them on the balance of their accounts to the said (*applicant*) or as he may direct within ten days after the same shall have been ascertained by the Master of this Court at , and that thereupon the said sequestrators may be relieved and discharged from all liability in respect of their said office, and that the bond given by them to the Accountant of the Supreme Court of Judicature for Ontario for the due performance of their duties may therefrom be ordered to be delivered up to be cancelled. And in support, &c.

(*Formal parts: see No. 403.*)

1106

Notice of motion for a writ of attachment.

On behalf of the _____ for an order that a writ or writs of attachment against the _____ may be issued for his contempt in not (*specifying the matter of contempt*) pursuant to the judgment [*or, order*] herein, dated the _____ day of _____, 19____, and that the _____ may be ordered to pay to the applicant his costs of this application and of the issue of the said writ or writs of attachment.

1107

Order thereon.

(*May be framed from the foregoing notice.*)

Writ of Attachment. (Rule 853.)

(*Title, &c., as in No. 1064.*)

1108

Writ of attachment.(a)

Edward the Seventh, &c., to the Sheriff of _____, Greeting:

We command you to attach *C.D.*, notwithstanding any right of place he is in, so as to have him before our Justices in our High Court of Justice at Toronto immediately after the receipt hereof, then and there to answer to us, as well touching a contempt which he it is alleged hath committed against us, as also such other matters as shall be then and there laid to his charge, and further to perform and abide such order as our said Court shall make in this behalf, and hereof fail not, by reason of any liberty, and bring this writ with you. Witness, &c.

(*Place of issue in the margin.*)

(*Indorsement.* This writ was issued, &c., as in Form 1064.)

Con. Rules, 1888, Form 194.

1109

Sheriff's returns to writ of attachment.

(1) *Cepi Corpus et paratum habeo.*

(2) The like and that defendant is in prison.

I have attached the within named _____, as within I am commanded, whose body I have ready.

The answer of _____, Esquire, Sheriff.

I have attached the within named _____, whose body remains in the common gaol for the County of _____, under my custody.

The answer of _____, Esquire, Sheriff.

The within named
bailiwick.

is not found in my (3) *Non est
inventus.*

The answer of

, Esquire, Sheriff.

(*Formal parts: as in No. 403.*)

On behalf of the , who is now a prisoner in the custody of the Sheriff of , under an attachment issued against him for his contempt in not (*stating the default*) pursuant to the judgment [*or, order*] dated the day of , 19 , that a writ of habeas corpus may be issued, directed to the said Sheriff to bring the applicant to the Bar of this Court.

1110

Notice of motion for
Habeas Corpus
by contemnor.

(*Formal parts: as in No. 403.*)

On behalf of the that the be committed to the common gaol for the County of [for a contempt of this Honourable Court in publishing or writing and procuring to be published in a newspaper called the on the day of , a letter (*stating effect*), [*or, for not (state default)*] pursuant to the judgment [*or, order*] made in this action, and dated the day of , 19 ,] and that the said may be ordered to pay to the applicant his costs of and incidental to this application and the order to be made thereon.

1111

may Notice of motion for commitment.

(*Formal parts: as in No. 403.*)

On behalf of the that he may be discharged out of the custody of (*as may be*) as to his contempt in not (*specify default*) pursuant to the judgment [*or, order*] made herein and dated the day of , 19 !

1112

Notice of motion for discharge from custody.

(*If on the ground of irregularity, proceed: on the ground that (state irregularity).*)

SECTION IV.—RETURN OF WRITS OF EXECUTION.

*Certificate in lieu of Return of Writ as to Goods. (Rule 883.)***1113**Certificate in
lieu of return.
(a)

In the High Court of Justice.

Between—*A.B.*, Plaintiff,
and
C.D., Defendant.

Writ of execution in this cause against the goods and chattels, lands and tenements of *C.D.*, the above-named defendant (or as the case may be), to me directed, dated the day of , 19 , issued from the Central Office of the High Court of Justice at Osgoode Hall, Toronto (or as the case may be).

I certify that I have this day indorsed on the above-mentioned writ my return thereto as to goods and chattels as follows:—

(Here insert the return as indorsed.)

Dated this day of , 19 .

E.F.,

Sheriff of the County of .

1114Demand on
Sheriff for re-
turn of writ
(b)

I hereby require you to within 8 days from the service hereof (inclusive of the day of such service) to return the writ of (*feri facias*) issued in this action.

Dated this day of , A.D. 19 .

Solicitor for the .

*(Formal parts: see No. 11.)***1115**Order for re-
turn of writ.
(b)

It is ordered that the Sheriff of the County of , within six days next after the service of this order do peremptorily return the writ of (*feri facias*) issued herein.

(a) Con. Rules, 1897, Form 185.

(b) This order may be issued on præcipe; see Rule 885.

1116

By virtue of this writ to me directed I have caused to be made of the [goods and chattels of the within named *C.D.*] the moneys [*or*, \$], and interest within mentioned which I have ready before the Justices of His Majesty the King at the day and place within mentioned to be rendered to the said *A.B.* as within commanded. Returns by Sheriff.
(1) *Fieri feci.*

The answer of , Esq.,
Sheriff.

The within named *C.D.* has no goods or chattels in my bailiwick whereof I can cause to be made the moneys [*or*, \$] and interest within mentioned or any part thereof, as I am within commanded. (2) *Nulla bona.*

The answer of , Esq.,
Sheriff.

By virtue of this writ to me directed I have caused to be made the goods and chattels of the within named *C.D.* to the value of \$, which said money I have [paid to the within named *A.B.* [*or*, I have ready before the Justices of His Majesty the King at the day and place within mentioned to be rendered to the said *A.B.*]: And I further certify that the said *C.D.* hath no more goods or chattels in my bailiwick, whereof I can cause to be made the residue of the within mentioned moneys [*or*, \$] and interest, or any part thereof as I am within commanded. (3) *Fieri feci*
as to part,
nulla bona as
to residue.

The answer of , Esq.,
Sheriff.

By virtue of this writ to me directed I have caused to be made of the goods and chattels of the within named *C.D.* to the value of \$; \$ part whereof I have paid to *L.B.*, the landlord of the premises on which the said goods and chattels were seized under the said writ, for rent (not exceeding one year) (*d*) due to him for the said premises on last; [*or*, \$ (further) part whereof I have (4) *Fieri feci*
for part and
payment of
part to land-
lord for rent or
collector for
taxes.

(c) For certificate of this indorsement when the writ remains in the sheriff's hands as to land, see Form No. 1113 and Con. Rule 883.

(d) See R. S. O. 1897, c. 342, s. 19.

(5) Poundage retained. paid to the collector of taxes for the municipality of for taxes due from the said *C.D.*]; and \$ further part whereof I have retained for poundage, officer's fees, costs of levying, and other my expenses of the execution; and \$ residue thereof I have paid to the said *A.B.* [*or, I have ready before the Justices of His Majesty the King to be rendered to the said A.B., as within commanded. And the said C.D. hath not any more goods, &c. (as in the preceding Form.)*]

(5) Goods in Sheriff's hands for want of buyers. By virtue of the writ to me directed, I have taken goods and chattels of the within named *C.D.* to the value of \$ [*or, of the moneys and interest within mentioned*]; which said goods and chattels remain in my hands unsold for want of buyers; therefore I cannot have that money before the Justices of His Majesty the King, at the day and place within mentioned as I am within commanded. (*If the value returned be less than the amount of moneys and interest ordered by the writ to be levied, return nulla bona for the residue as in the preceding form.*)

(6) Part sold and rest remaining in Sheriff's hands for want of buyers. By virtue of this writ to me directed I have caused to be made of the goods and chattels of the within named *C.D.* to the value of \$, and have exposed them for sale from day to day and have thereof sold to the value of \$, which money I have ready before the Justices of His Majesty the King at the day and place within mentioned to be rendered to the within named *A.B.*, as I am within commanded; and the residue of the said goods and chattels remain in my hands unsold for want of buyers. (*If the value returned be less than the amount ordered by the writ to be levied, return nulla bona for the residue as in the preceding form.*)

(*Formal parts: see No. 744.*)

1117

Affidavit for attachment for non-return of writ or for an insufficient return.

I, , solicitor for the above named [plaintiff], make oath and say as follows:—

1. I did on the day of , before the hour of o'clock in the afternoon serve the Sheriff of the County of , with the order hereto annexed by delivering to and leaving with [Mr. , the deputy for said Sheriff.

or, Mr. , a clerk in the office of said Sheriff, at his office in the of , a true copy of said order, at the same time shewing the said Mr. , the said original order.

2. I have this day searched [*or*, did on the day of search] in the office of this Honourable Court, being the proper office in that behalf, for the return of the writ of [*feri facias*] in the said order mentioned, but the same was not filed in the said office.

Sworn, &c.

(*Formal parts: as in No. 902.*)

1. It is ordered that a writ of attachment issue against the Sheriff of the County of , for his contempt in not returning the writ of *feri facias* issued in this action pursuant to the said order of the day of .

1118

Order for an attachment against the Sheriff.

2. And it is further ordered that the said Sheriff do pay to the his costs of the demand for the return of said writ and of the said order of the day of , and the costs of this motion (*as may be ordered*).

(*Title, &c., as in No. 1064.*)

Edward the Seventh, &c.

To , Coroner of the County of
Greeting:

1119

Writ of attachment, against Sheriff.

We command you that you attach , Esq., Sheriff of our said County, notwithstanding any right of place he is in, so as to have him before our Justices in our High Court of Justice at Toronto immediately after the receipt hereof, then and there to answer to us as well touching a contempt against us in not returning the writ of *feri facias* issued pursuant to an order made in this action in that behalf as also such other matters as shall be then and

there laid to his charge. And hereof fail not by reason of any liberty, and bring this writ with you.

Indorsement. This writ was issued, &c., as in No. 1064.

(Forms may be framed from the above in the case of proceedings against Coroners to compel the return of writs directed to them.)

1120

Bill of sale
from sheriff
of goods
seized under a
f. fa.

To all persons to whom these presents shall come, I, _____, Esquire, Sheriff of the _____ of _____ send Greeting.

Whereas by virtue of His Majesty's writ of *fieri facias* issued out of the High Court of Justice for Ontario to me directed and delivered for levying on the goods and chattels and lands and tenements of *C.D.*, \$ _____ which *A.B.* in the said Court hath recovered against him, together with interest on the said \$ _____ (*as in the writ*), as by the said writ will more fully appear, I have taken into my hands the several goods and chattels of the said *C.D.* hereafter mentioned, that is to say (*set them out or specify them in a schedule and refer to it*), which have been valued and appraised at \$ _____. Now, know ye, that I, the said (*sheriff*) by virtue of the said writ and my office, and for and in consideration of the sum of \$ _____ to me in hand paid by the said *A.B.*, do hereby as much as in me lieth by virtue of my said office, fully and absolutely bargain, sell and deliver to the said *A.B.* the said goods and chattels to have and to hold for his own proper use and benefit for all the estate, right, title and interest of the said *C.D.* therein and thereto.

In witness whereof I have hereunto set my hand and seal the _____ day of _____ A.D. 19 ____.

Signed, sealed and delivered in presence of _____.

CHAPTER XVI.

PROCEEDINGS IN AID OF EXECUTION.

SECTION I.—EXAMINATION OF JUDGMENT DEBTOR, &c.

(*Court and style of action: as in No. 25.*)

1121

Upon the application of the
point day next, the day of , 19
at the hour of o'clock m., at
in the of , for the ex-
amination before me *viva voce*, upon oath of the
above-named defendant as to any and what debts
are due and owing or accruing due to alone or
jointly with any other persons; and also touching his
estate and effects, and as to the property and means he had
[when the debt or liability which was the subject of this
action was incurred *or in the case of a judgment for costs*
only, at the time of the commencement of this action or
matter], and as to the property he now has and the means
he still has of discharging the said judgment, and as to the
disposal he may have made of any property [since contract-
ing such debt or incurring such liability *or in the case of*
a judgment for costs only, since the commencement of this
action or matter].

Dated at the

1122

In the matter of the Revised Statute respecting Assign-
ments and Preferences by Insolvent Persons.

And in the matter of an assignment for the benefit of
creditors made by *A.B.*, of the of , mer-
chant, to *E.C.* of the of , assignee.

Upon the application of the above-named 'assignee I here-
by appoint , the day of , 19 , at
the hour of o'clock in the noon, at my chambers
[*or, office*] Number Street in [the City of Toronto,] for
the examination upon oath of the said *A.B.* [*or, X.Y., a*

(a) See R. S. O. 1897 c. 147, s. 34.

former employee of the said *A.B.*, or as the case may be] touching the estate and effects of the said *A.B.*, and as to the property and means he had when the earliest of the debts or liabilities of the said *A.B.* existing on the day of , the date of the assignment herein made by the said *A.B.* was incurred, and as to the property he the said *A.B.* now has and the means he still has of discharging his debts and liabilities and as to the disposal he the said *A.B.* has made of any property since contracting any such debt or liability, and as to any and what debts are owing to him, the said *A.B.*

Dated the day of , 19 .
 Master; or Local Master of the Supreme Court of Judicature at ;
 or Local Registrar; Deputy Clerk of the Crown; Special Examiner; Judge of the County Court of the County of ; or Official Referee as the case may be (a).

1123

Affidavit for application to examine a clerk or employee or person to whom a transfer of property has been made.
 Rule 903.

(Formal parts: see No. 744.)

1. By a judgment [or, order] herein dated the day of , 19 , the (*judgment debtor*) recovered [or, was ordered to pay to the (*execution creditor*) forthwith or as may be the case], the sum of \$.

2. A writ of *fi. fa.* was issued under the said judgment [or, order] directed to the Sheriff of the of , in which the (*judgment debtor*) resides requiring the said Sheriff to levy the said sum of \$ (as may be the case).

3. The said Sheriff has informed me by letter that the (*judgment debtor*) has no goods and chattels in the said Sheriff's bailiwick, and that if required to make a return to the said writ he will be compeled to make a return of *nulla bona*; and the said execution is still in the hands of the said Sheriff wholly unsatisfied, and no part of the said sum of \$ has been paid (or as the case may be).

4. *A.B.*, of , who resides at , is [or, was formerly] in the employ of the (*judgment debtor*), as his [book-keeper], and has I verily believe knowledge of the property and means which the (*judgment*

debtor had [when the debt (*or*, liability) which was the subject of this action was incurred (*or in the case of a judgment or order for costs only* at the time of the commencement of this action], and as to the property or means he still has of discharging the said judgment [*or order*] [*if so*, and as to the disposal he has made of any property since contracting the debt or incurring the liability, and as to any and what debts are owing to him.]

Or, 4. On or about the day of (*b*), the said (*judgment debtor*) transferred (*mentioning property transferred exigible under execution*) to *C.D.* [*or*, the *X.Y. Co.*, *mentioning the circumstances*].

5. *Shew any reasons why the examination of the person will be preferable or necessary in addition to that of the judgment debtor himself.*

(*May be framed from Nos. 1121 and 1122.*)

1124

Appointment
under the
foregoing
order.

(*Formal parts: see No. 403.*)

1125

on behalf of the (*creditor*) for an order that a writ of *capias ad satisfaciendum* against the defendant to satisfy the sum of \$ for debt [*or*, damages] and \$ for costs may issue out of this Honourable Court, directed to the Sheriff of the County of , [*or*, that the (*debtor*) be committed to close custody *or*, that the (*debtor*) be committed to the common gaol of the said county, for such period not exceeding twelve months, as may seem fit] on the ground that [without sufficient excuse he did not attend to be examined as a judgment debtor herein, *or*, upon his examination as a judgment debtor had before *A.B.*, Esquire, the of this Court at , the said (*debtor*) did not make satisfactory answers, *or*, refused to disclose his property or his transactions respecting the same in the following particulars that is to say (*state concisely the particulars in which the debtor's answers are alleged to be unsatisfactory, or he failed to disclose his property or*

Notice of
motion to
commit debtor
for non-
attendance, or
unsatisfactory
answers, or
for concealing
or making
away with his
property, &c.
(*c*)

(*b*) This date must be subsequent to the date when the liability or debt which was the subject of the action was incurred *or*, where the judgment *or* order is for costs only since the commencement of cause *or* matter. See Rule 903.

(*c*) Rule 907.

transactions. [Or, it appeared upon his examination before A.B., Esquire, as a judgment debtor, that the said (*debtor*) had concealed or, made away with (*specify the property*) being the property of the said (*debtor*) in order to defeat or defraud his creditors or some of them.] And take notice, (&c., as in No. 403.)

It must be shewn on the application in what County the debtor resides and if necessary an affidavit shewing that fact must be filed, and when the motion is to commit for non-attendance, due proof of service of the appointment and order, if any, must be adduced.

(Formal parts: see No. 902.)

1126

Order to commit debtor.

It is ordered that the plaintiff be at liberty to issue out of this Court a writ and one or more concurrent writs of *capias ad satisfaciendum* upon the judgment recovered in this action directed to the Sheriff of the County of _____, (and to the Sheriffs of such other County or Counties as may be named in the said concurrent writ or writs) requiring such Sheriff [or, that a writ of attachment do issue directed to the Sheriff of the County in which the said (*debtor*) may be found requiring the said Sheriff] to take the said (*debtor*) into his custody, and to commit him to the common gaol of his said County for the space of _____ months for that, (*here state shortly the ground upon which the debtor is committed*).

(Formal parts: as in No. 902.)

1127

Order for defendant to attend for re-examination as a judgment debtor.

Upon the application of the above-named plaintiff for an order to commit the defendant _____ to the common gaol of the County of _____, for unsatisfactory answers upon his examination as a judgment debtor, upon reading the examination, &c., &c., and upon hearing what was alleged by counsel for

1. It is ordered that the said defendant _____ do at own expense and without payment of further conduct money attend before _____ at such time and place as he shall appoint, and submit to be further examined upon oath as to any and what debts are due and owing or accruing due to said defendant alone or jointly with any other person or persons, and touching _____ estate and effects, and as to the property

and means had when the debt or liability (which was the subject of this action and for which judgment has been obtained against) was incurred, and as to the property the defendant now has or is interested in, and the means still has of discharging the said judgment, and as to the disposal may have made of any property since contracting such debt or incurring such liability.

2. And it is further ordered that the defendant do pay to the plaintiff costs of the said examination already had and of this motion forthwith after taxation thereof.

3. And the further consideration of this application is hereby reserved until after such further examination shall have been had; liberty being given to the plaintiff then to resume this application to commit.

SECTION II.—ATTACHMENT OF DEBTS.

Affidavit in support of Garnishee Order. (Rule 911.)

In the High Court of Justice.

Between

Judgment Creditor,
and
Judgment Debtor.

1128
Affidavit for
attaching
order. (a)

I, of the above-named judgment creditor [or, solicitor for the above-named judgment creditor, *or as the case may be*] make oath and say as follows:

1. By a judgment of the Court given in this action, and dated the day of , 19 , it was adjudged that I [or, the above-named judgment creditor] should recover against the above-named judgment debtor the sum of \$, and costs to be taxed, and the said costs were by a taxing officer's certificate dated the day of 19 , allowed at \$.

2. The said still remains unsatisfied to the extent of and interest amounting to \$.

3. (*Name, address, and description of garnishee*) is indebted to the judgment debtor in the sum of \$ or thereabouts.

4. The said (*insert name of garnishee*) is within Ontario.

[Where the garnishee is not within Ontario the affidavit must shew circumstances which would justify the making of an order for service of a writ of summons out of Ontario.]

Sworn, &c.

Con. Rules, 1888, Form 51.

1129

Garnishee
order (attach-
ing debts) (a).

Garnishee Order (Attaching Debts). (Rule 911.)

In the High Court of Justice.

The Master in Chambers (or as may be).

[Date.]

Between

Judgment Creditor,
and
Judgment Debtor,

Garnishee.

1. Upon the application of , and upon reading the affidavit of filed, and upon hearing the solicitor [or, counsel] for

2. It is ordered that all debts owing or accruing due from the above-named garnishee to the above-named judgment debtor be attached to answer a judgment recovered against the said judgment debtor by the above-named judgment creditor in the High Court of Justice on the day of , 19 , for the sum of \$, on which judgment the said sum of \$, remains due and unpaid.

3. And it is further ordered that the said garnishee attend before the in Chambers (or as the case may be) on day the day of , 19 , at o'clock in the noon, on an application by the said judgment creditor, that the said garnishee pay to the said judgment creditor the debt due from him to the said judgment debtor, or so much thereof as may be sufficient to satisfy the judgment. (b)

4. And it is further ordered that the costs of this application be

See Con. Rules, 1888, Form 142.

(a) Con. Rules, 1897, Form 125.

(b) Where the garnishee is within the jurisdiction a preferable form of this clause which may be included in the attaching order or made on a separate application would be as follows:

3. And it is further ordered that the said garnishee do attend before (state before whom and time and place) or as soon thereafter as the motion can be heard to show cause why he should not be ordered to pay to the said judgment creditor, &c., conclude as above.

Notice of Garnishee Order, in lieu of Order, to be given out of Ontario. (Rule 911.)

In the High Court of Justice.

Between—A.B., Judgment Creditor,

and

C.D., Judgment Debtor,

E.F., Garnishee.

1130

Notice of
attaching
order to be
served out of
Ontario. (c)

To E.F., of

Take notice that an order has been obtained attaching all debts owing or accruing due from you to the above-named judgment debtor, to answer a judgment recovered against the said judgment debtor by the above-named judgment creditor in the High Court of Justice, on the day of 19 , for the sum of \$, on which judgment the sum of \$ remains due and unpaid.

And take further notice that an order has also been obtained appointing the day of , 19 , at o'clock in the forenoon, for the making of an application before at by the said judgment creditor, for a further order that you pay to the said judgment creditor the debt due to the said judgment debtor from you, or so much thereof as may be sufficient to satisfy the said judgment; and an application will be made accordingly, and if you do not attend on the return of the said motion an order may be made in your absence.

Dated at the day of 19 .

(Signed) A.B., of &c., the above-named Judgment Creditor, or
X.Y., of &c., Solicitor for
the said A.B.

Garnishee Order (Final).

In the High Court of Justice.

The Master in Chambers (or as may be).

(Date.)

Between

Judgment Creditor,

and

Judgment Debtor,

and

Garnishee.

1131

Final order
against gar-
nishee. (d)

1. Upon the application of , and upon reading the affidavit of filed, and the order herein dated the

(c) Con. Rules, 1897, Form 126.

(d) Con. Rules, 1897, Form 127.

day of , 19 , whereby it was ordered that all debts owing or accruing due from the above-named garnishee to the above-named judgment debtor should be attached to answer a judgment recovered against the said judgment debtor by the above-named judgment creditor in the High Court of Justice on the day of , 19^o , for the sum of \$, on which judgment the said sum of \$ remained due and unpaid, and upon hearing the solicitor [*or, counsel*] for

2. It is ordered that the said garnishee do forthwith pay the said judgment creditor the debt due from him to the said judgment debtor [*or, so much thereof as may be sufficient to satisfy the judgment debt.*] [*Or, that the said attaching order be and the same is hereby rescinded, or as may be ordered*].

3. And it is further ordered that the costs of this application be

See Con. Rules, 1888, Form 143.

(*Formal parts: as in No. 902.*)

1132

Order for
issue, gar-
nishee disput-
ing his lia-
bility.

1. It is ordered that the judgment creditor and the garnishee proceed to the trial of an issue wherein the said judgment creditor shall be plaintiff and the said garnishee shall be defendant, and the question to be tried therein shall be whether the said garnishee was indebted to the judgment debtor in any and what amount at the time of the service of the attaching order herein.

2. And it is further ordered that the said issue be prepared by the said judgment creditor and delivered to the defendant therein in [ten] days, and that the said defendant do return the same within [seven] days thereafter.

3. And it is further ordered that the said issue shall be tried at

4. And it is further ordered that the question of costs and all further questions be reserved until after the trial of the said issue to be disposed of by the Judge at the trial of the said issue or in Chambers.

(*Formal parts: as in No. 902.*)

1. It is ordered that the above-named claimant and the said judgment creditor and garnishee attend before the Master in Chambers at (or as the case may be), and state the nature and particulars of their respective claims and maintain or relinquish the same and abide by such order as may be made herein.

1133

Order requiring a third party to state the nature of his claim. (a)

(*Formal parts: as in No. 902.*)

1. It is ordered that the said claimant and judgment creditor do proceed to the trial of an issue wherein the claimant shall be plaintiff and the judgment creditor defendant, and that the question therein to be tried shall be whether at the time of the service of the attaching order herein dated the day of the sum sought to be attached, or any part thereof, was the property of the claimant as against the judgment creditor.

1134

Order for an issue between claimant and judgment creditor.

2. And it is further ordered (*as in No. 1132*).

In the High Court of Justice.

Between—*A.B. (Judgment Creditor)*, Plaintiff,
and
E.F. (Garnishee), Defendant.

1135

Garnishee issue.

The plaintiff affirms and the defendant denies that the defendant was indebted to *C.D.* of the of (*address and description of judgment debtor*) in the sum of \$, or some other sum at the time of the service on the defendant of the attaching order dated the day of , 19 , issued in an action in this Court (*or as the case may be*) in which the above-named plaintiff is plaintiff and the said *C.D.* is defendant.

(a) See Rule 920.

And it has been ordered by the Master in Chambers that the said issue shall be tried by [a jury at the Town of].

Therefore [let a jury come *or* let the said question be tried accordingly].

Delivered this day of , 19 , pursuant to the order in the said action dated the day of , 19 , by of the of in the County of solicitor for the above-named plaintiff.

1136

Fi. Fa. against
a garnishee.

See No. 1068.

1137

Notice of motion for a receiver where the judgment debtor is a member of the firm.

(*Formal parts: as in No. 403.*)

For an order that be appointed receiver on the usual terms of the said (*judgment debtor's*) share of the profits whether already declared or accruing, and of any other moneys which may be coming to the said (*judgment debtor*) in respect to the said partnership.

CHAPTER XVII.

APPEALS.

SECTION I.—MOTIONS FOR LEAVE TO APPEAL, TO STAY PROCEEDINGS, &c.

(*Formal parts: see No. 403.*)

on behalf of the (defendant) for an order extending the time for appealing to the Divisional Court [*or, to the Court of Appeal*] from the judgment [*or, order*] pronounced herein by [the Master in Chambers *or* the Hon. Mr. Justice *or as the case may be*] on the day of , 19 , on the grounds that (*state the grounds*).

1138

Notice of motion extending the time for appealing. (a)

(*Formal parts: see No. 744.*)

1. *Shew state of cause.*
2. *Explain why motion was not made within the usual time, and explain any other delay which may have arisen. (b)*
3. *Shew how applicant will be prejudiced if deprived of opportunity of moving against or appealing from the judgment or order.*
4. *Shew, if possible, that the other side will not be prejudiced by the delay.*
5. *Shew in what respects the judgment or order is conceived to be erroneous, and that applicant has good ground for moving or appealing.*

1139

Affidavit in support.

(*Formal parts: see No. 403.*)

on behalf of the [defendant *C.D.*] for an order staying all further proceedings under the judgment [*or, order*] made in this cause on the day of last, pending the appeal from the said judgment. And take notice (&c., *as in Form No. 403*).

1140

Notice of motion to stay proceedings pending appeal from judgment.

(a) See Rule 42, par. 3.

(b) The affidavit should, if possible, shew a *bonâ fide* intention to appeal entertained while the time for appealing had not elapsed, and a suspension of further proceedings by reason of special circumstances: *Smith v. Hunt*, 1902, 5 O. L. R. 97.

1141

Affidavit in support.

(Formal parts: see No. 744.)

1. *Shew state of cause.*

2. *Shew that applicant intends to and will prosecute the appeal, and that application is made bona fide and not for delay.*

1142

Notice of motion for leave to appeal from Master's report.

(Formal parts: see No. 403.)

on behalf of the [plaintiff] for an order giving him liberty to appeal from the report of the Master at dated the day of , and filed on the day of notwithstanding that the same has become confirmed, on the grounds set forth in the schedule hereto annexed, [*or, on the following grounds stating the grounds of appeal*]. And take notice (&c., as in Form No. 403).

1143

Affidavit in support.

(Formal parts: see No. 744.)

1. *Shew state of cause.*

2. *Explain why appeal not commenced before confirmation of report, and also explain any delay which may have arisen in making application. (a)*

3. *Verify grounds of appeal alleged in the notice of motion.*

SECTION II.—APPEALS FROM ORDERS IN CHAMBERS.

1144

Notice of motion on appeal from an officer in Chambers.
(b)

(Formal parts: as in No. 403.)

by way of appeal from the order herein of the [Master in Chambers or local Judge for the County of in Chambers or as the case may be] dated the day of , 19 , and to reverse the same, and for an order that (*indicating the order desired*); or to vary the same by (*indicating the variation desired*); or for such other order as may seem just.

And take notice, &c. (*as in No. 403.*)

(a) See note (b) on p. 683.

(b) See Rule 767.

(May be framed from the preceding form.)

1145

(It is expedient, though not absolutely necessary, to shortly state the grounds of appeal, thus: Upon, amongst others, the grounds following, viz.: (1), (2), &c., and upon other grounds appearing in the affidavits and papers filed).

Notice of appeal from order of a Judge in Chambers. (c)

SECTION III.—APPEALS FROM REPORTS OF MASTERS AND REFEREES.

(Formal parts: as in No. 400.)

1146

by way of appeal from the report of the Master of the Supreme Court of Judicature at dated the day of and filed the day of 19 , upon the grounds following, viz.:

Notice of appeal from the report of a Master or Referee. (d)

(1) Because the said Master has found, &c., whereas, &c.

(2) And because the said Master should not, &c.

(3) And because, &c.

(Setting out clearly and concisely the several grounds of appeal.)

And take notice that upon and in support of such appeal will be read the pleadings and judgment herein, the said report and the affidavits, depositions and other proceedings filed and taken in the office of the said Master upon the reference to him herein (as may be necessary).

Dated the day of A.D. 19 .

A.B.

Solicitor for the

To C.D.,

Solicitor for the

SECTION IV.—APPEALS FROM TAXATIONS OF COSTS.

(Formal parts: as in No. 403.)

1147

By way of appeal from the certificate of one of the taxing officers of the Supreme Court of Judicature dated the day of , 19 , on the taxation of the costs of the

Notice of motion by way of appeal from a taxing officer. (e)

(c) See Rule 777, and Form 400.

(d) See Rules 769-771.

(e) See Rule 774.

under the judgment [*or, order*] herein dated the day of , 19 , on the grounds following (*stating them*) ; [*or on the grounds set forth in the objections to the ruling of the said taxing officer brought in before him on the said taxation*] and for such order in respect to the premises as may be just.

And take notice, &c. (*as in No. 403.*)

(*Formal parts: see No. 902.*)

1148

Order on an appeal from a local taxing officer referring the bill for revision and report to a taxing officer at Toronto.

It is ordered that the said bill be and the same is hereby referred to Mr. one of the taxing officers at Toronto for revision and report upon the items therein in question upon this motion, and that this motion do stand adjourned until the first day on which a Judge sits in Chambers after the date of the certificate of the said taxing officer as to the matters hereby referred to him.

SECTION V.—APPEALS TO DIVISIONAL COURTS FROM JUDGMENTS OR ORDERS OF THE HIGH COURT.

(*Formal parts: see No. 400.*)

1149

Notice of motion against a verdict or for a new trial.

Take notice that a motion will be made at the next sittings of a Divisional Court (commencing on or about) at Osgoode Hall, Toronto, on behalf of the [plaintiff] to set aside the judgment pronounced herein by the Hon. Mr. Justice at the trial of this action, dated the day of , 19 , and for judgment herein for the [plaintiff] or for a new trial, on, amongst others, the grounds following:

(1) That the learned Judge at the trial erroneously rejected [*or, admitted*] the evidence of

[*Or, Where the trial was by jury: (1) That the learned Judge at the trial misdirected the jury in [stating how].*

(2) [*In the case of a nonsuit: That there was ample evidence in support of the plaintiff's claim, and the learned Judge's ruling to the contrary was erroneous.*]

(3) That the said judgment was contrary to the evidence, [*or against the weight of evidence*].

[Or where the trial was by jury: (3) That the finding of the jury (or, the finding of the jury upon the question, &c., as may be the case), was contrary to the evidence or against the weight of evidence, and contrary to the direction of the Judge and perverse].

(Formal parts: see No. 400.)

Take notice that upon the hearing of the [plaintiff's] appeal from the [judgment pronounced at the trial of this action on the day of last] the [defendant] will contend and insist that the said [judgment] should be vacated, and that [this action should be ordered to be dismissed with costs to be paid by the plaintiff to the defendant] and that the [plaintiff] should be ordered to pay the costs of this motion, and further take notice that the [defendant] will not prosecute this cross-appeal unless the [plaintiff's] appeal is proceeded with. (a)

1150

Notice of motion by way of cross appeal (a).

(Formal parts: as in No. 400.)

for an order setting aside the order pronounced herein by the Hon. Mr. Justice dated the day of , 19 , granting an injunction restraining the defendant from (as may be the case) and for an order dismissing the motion made for the said order on, amongst others, the grounds following (stating them).

1151

Notice of motion by way of appeal from an order in court. (b)

SECTION VI.—COUNTY COURT APPEALS.

In the County Court of the County of

Between—A.B., Plaintiff,

and

C.D., Defendant.

I, [senior] Judge of the County Court of the County of pursuant to section 55 of "The County Courts Act," and Consolidated Rule 793 of the Rules of

1152

Certificate of County Judge (c).

(a) Where the cross appeal is intended to be argued whether the opposite party's appeal is argued or not, the form of the notice of motion should follow the preceding form.

(b) See R. S. O. 1897 c. 51, s. 75 (1).

(c) See R. S. O. 1897 c. 55, s. 55, and Rule 793.

will be heard at the sittings of the Divisional Court which commence on Monday the day of , 19 .

To Y.Z.,
Solicitor for the [plaintiff].
Solicitor for the [defendant].

SECTION VII.—APPEALS TO THE COURT OF APPEAL.

Notice of intention to appeal to Court of Appeal. (Rule 799.)

In the High Court of Justice.

Between—*A.B.*, (Respondent),
Plaintiff,
and
C.D., (Appellant),
Defendant. (*b*)

Take notice that *C.D.*, the above-named appellant, intends to appeal and hereby appeals from the [judgment, *or* order] pronounced in this action by the Divisional Court of the High Court of Justice [*or*, by the Hon. Mr. Justice] on the day of , 19 , whereby (*stating shortly the effect of the judgment, &c., appealed from*).

Dated, &c.

Y.Z.,
Solicitor for C.D.

(Style of cause: as in No. 1155.)

Statement of Case.

This is an appeal from the judgment of the Hon. Mr. Justice _____, pronounced on the _____ day of _____, 19____.

The plaintiff brought this action (*stating concisely the nature of the question raised in the action*).

The reasons for the decision of the Hon. Mr. Justice appear in his written judgment.

(a) Con. Rules, 1897, Form 68.

(b) As to the style of cause, see Rule 814.

(c) See Rule 801 (2).

The action was dismissed with costs and the plaintiff appeals therefrom, and claims (*as may be necessary in the circumstances of the case*).

Pleadings.

It is proposed to set out copies of the pleadings in full. (*Otherwise a statement of the pleadings should be set out such as is considered by the appellant to be sufficient*).

Evidence

[As supplied by the reporter.]

Exhibits.

(No. 1 (p. of the evidence.)

[To be set out in full. Or give such statement of its purport as will be sufficient for the purposes of the appeal.]

(No. 2 (p. of the evidence.)

&c., &c., &c.,

The Judge's written opinion.

[In full. Or reference to the report if reported.]

Judgment.

[Copy as entered or if not entered as settled by the proper officer.]

Reasons of appeal.

(*Copy to accompany the case.*)

(*Style of cause: as in No. 1155.*)

1157
Reasons of
appeal.

Reasons for appeal.

The appellant submits that the judgment pronounced herein by the Hon. Mr. Justice should be reversed and judgment pronounced in favour of the appellant for the following among other reasons:

1. The evidence shewed, &c.
2. &c., &c.

(*State the various points in convenient paragraphs numbered.*)

Cases may be cited as may be convenient in support of the various contentions put forward, or the reasons may conclude thus:

The appellant will refer to the following amongst other authorities: (*citing them.*)

(*Style of cause: as in No. 1155.*)

Reasons against appeal.

1158
Reasons
against appeal

The respondent submits that the judgment appealed from is right and should be affirmed for the following amongst other reasons:

1, 2, &c. (*To be stated in paragraphs and referring to authorities relied on as in the case of reasons of appeal.*)

(*Style of cause: see Nos. 25 and 1155.*)

Take notice that the appellant [*or, respondent*] desires the appeal books on this appeal to be printed

1159
Notice of de-
sire to print
appeal books.
(a).

Dated the day of , 19 .

Appellant's [*or, respondent's*] solicitors.

To

Respondent's [*or, appellant's*] solicitor.

(*Style of cause: as in No. 1159.*)

Take notice that the respondent [*or, appellant*] objects to the printing of appeal books herein.

1160
Notice of ob-
jections
thereto.

Dated the day of , 19 .

Respondent's [*or, appellant's*] solicitor.

To

Appellant's [*or, respondent's*] solicitor.

(a) See Rule 802. When given by the appellant, this notice may be appended to or indorsed upon the draft case and served with it. When given by a respondent it will necessarily be served as an independent document, and when served as a separate document it should commence with a short or shortened style of the action.

Appeal Bond on Appeal to the Court of Appeal where security is required. (Rule 830).

1161

Appeal bond
(a)

Know all men by these presents that we (*naming all the obligors with their places of residence and additions*), are jointly and severally held and firmly bound unto (*naming the obligees with their places of residence and additions*), in the penal sum of _____ dollars, for which payment well and truly to be made, we bind ourselves, and each of us by (*b*) himself, our, and each of our heirs, executors and administrators, respectively, firmly by these presents.

Dated this _____ day of _____

Whereas (*the appellant*) complains that, in the giving of a certain judgment in a certain suit in His Majesty's High Court of Justice for Ontario, between (*naming the parties to the cause*) manifest error hath intervened, wherefore (*the appellant*) desires to appeal from the said judgment to the Court of Appeal.

[*Where it is desired also to give security in order to stay execution insert*, And whereas, the said (*appellant*) is desirous of having the execution of the said judgment stayed pending the appeal.]

Now the condition of this obligation (*c*) is such, that if (*the appellant*) do and shall effectually prosecute such appeal, and pay such costs and damages as shall be awarded, in case the judgment aforesaid to be appealed from shall be affirmed or in part affirmed, [*In order to stay execution (See Rule 827) where the judgment directs sale or delivery of possession of property add*, and during the possession of the property in question in the said action (*or otherwise describing it*) by (*the appellant*) he shall not commit or suffer to be committed any waste on the property, and that if the judgment be affirmed, or in part affirmed, he shall pay the value of the use and occupation of the property from the time of the appeal until the delivery of possession thereof (*add, if ordered, in case the judgment is for the sale of the property and payment of any deficiency arising upon the sale, and that in case of any deficiency arising upon a sale as directed by*

(a) Con. Rules, 1897, Form 197.

(b) In *Jamieson v. London & Canadian, etc.*, 18 P. R. 413; *Young v. Tucker*, 18 P. R. 449, it seems to have been considered that the word "binds" should be substituted for "by." Probably "for" might be substituted for "by." See Form 1184.

(c) Where a bond varies from the condition as here prescribed it may be invalid: *Davidson v. Fraser*, 17 P. R. 246.

the said judgment he shall pay the amount of the deficiency) or the part thereof as to which the judgment may be affirmed, if it be affirmed only as to part [*add if ordered where the judgment directs the payment of money*, and shall pay the amount by said judgment directed to be paid, either as a debt, or for damages or costs, or the part thereof as to which the judgment may be affirmed, if it be affirmed only as to part and all damages and costs awarded against (*the appellant*) on such appeal] [*where the judgment directs the delivery of documents or personal property add*, and shall obey the order to be made by the Court of Appeal] then this obligation shall be void, otherwise to remain in full force.

[*Where the security is given pursuant to any order, the bond will recite the order and the condition will be varied if necessary according to the terms of the order.*]

Signed, sealed and delivered, in the presence of

Affidavit of Justification by each Surety to be Annexed.
(Rule 830.)

In the High Court of Justice.

Between—A.B. (Respondent), Plaintiff,

v.

C.D. (Appellant), Defendant.

I., E.F., of make oath and say as follows:—

1. I am one of the sureties to the annexed bond.
2. I am a resident inhabitant of Ontario, residing at ,
and am a householder in [*or*, a freeholder in].

3. I am worth and own property to the amount of ,
[*the sum mentioned as the penalty or such sum as the deponent is bound in*, over and above what will pay all my debts (*if surety in any other matter add*) and every other sum for which I am now liable or for which I am bail or surety].

4. I am not bail or surety for any plaintiff or defendant except in this action (*or if bail or surety in any other cause or matter add*, and except for G.H. in an action in the High Court in which X.Y. is plaintiff, and G.H. is defendant) in the sum of \$ or as the case may be, specifying the several causes or matters, with the Court in which each is, and the sums in which the deponent is bail or surety).

1161a

Affidavit of
justification.

5. And I, *J.H.*, of _____, make oath and say as follows:—
(in similar terms as the case may require; or separate affidavits may be made).

The above-named deponents,
E.F. and *J.H.*, were sworn,
 &c., the _____ day of
 19 _____, before me.

Commissioner, &c.

Con. Rules, 1888, Form 209.

Affidavit of
 execution.

(An affidavit of execution (a) of the bond must be annexed to it, for a form of which see No. 1187.)

1162

Notice of
 argument of
 appeal (b)

Notice of Argument of Appeal. (Rule 811.)

In the Court of Appeal for Ontario.

Between—*A.B.* (Respondent),
 and
C.D. (Appellant),
 Plaintiff,
 Defendant.

Take notice that the appeal herein will be heard at the
 sitting of the Court of Appeal which commences on Tues-
 day, the _____ day of _____, 19 _____.

Dated this _____ day of _____, 19 _____.

Y.Z.,

Solicitor for Appellant.

To

Solicitor for respondent.

1163

Certificate of
 Court of
 Appeal.

In the Court of Appeal for Ontario.

(Style of cause: as in No. 1155.)

This is to certify that the appeal of the above-named
 appellant from the judgment of the Honourable _____ of

(a) An affidavit of execution not styled in the action was in
Molson's Bank v. Cooper, 17 P. R. 153, held to be not invalid: See
Holmested and Langton, notes to Rule 830.

(b) Con. Rules, 1897, Form 69.

the High Court of Justice for Ontario pronounced on the day of having come on to be argued before this Court on the day of whereupon and upon hearing counsel as well for the appellant as the respondent this Court was pleased to direct that the matter of the said appeal should stand over for judgment; and the same having come on this day for judgment: It was ordered and adjudged that the said appeal should be and the same was allowed [*or, dismissed*] with costs to be paid by the respondent [*or, appellant*] to the appellant [*or, respondent*] forthwith after taxation thereof.

(*Where the appeal is allowed.*) And it was further ordered and adjudged that (*stating the judgment pronounced in the action in lieu of the judgment which is reversed.*)

SECTION VIII.—APPEALS TO THE SUPREME COURT.

(*May be framed from No. 1155. It will be entitled, In the Court of Appeal for Ontario, if the appeal is from that Court.*)

1164Notice of
appeal.

For commencement and Formal parts: see No. 1161. The penalty must be \$500 where the bond is for the costs of the appeal only. Then proceed according to the facts.

1165

Appeal bond.

Whereas a certain action was brought in the High Court of Justice for Ontario by the said *A.B.*, plaintiff, against the said *G.H.*, defendant; [and whereas judgment was given in the said Court against the said *A.B.*, who appealed from the said judgment to the Court of Appeal for Ontario (*c*)]. And whereas judgment was given in the said action [in the said last mentioned Court] on the day of , 19 . And whereas the said *A.B.* complains that in the giving of the [last mentioned] judgment in the said action upon the said appeal manifest error hath intervened, wherefore the said *A.B.* desires to appeal from the said judgment [of the Court of Appeal for Ontario] to the Supreme Court of Canada.

Now the condition of this obligation is such that if the said *A.B.* shall effectually prosecute his said appeal and pay such costs and damages as may be awarded against him by

due prosecution of the appeal by him the said (*appellant*) to the Supreme Court from the judgment of this Court made in this cause on the day of, &c., and for the payment of such costs and damages as may be awarded against him by the Supreme Court of Canada, by [filing in my office the bond of [himself], and *C.D.* and *E.F.*, his sureties, in the penal sum of [five hundred dollars], a true copy of which [bond] is hereunto annexed. [*Or*, by payment into Court to the credit of this action the sum of \$500, which sum now remains in this Court as security as aforesaid].

Given under my hand and the seal of the said Court, this day of, &c.

[L.S.]

W. N.,

Registrar of the Court of Appeal for Ontario.

The bond or other instrument by which security may have been given is to be annexed to the certificate.

(*Formal parts: see No. 1168.*)

This is to certify that by an order of the Honourable Mr. Justice , made in this cause, dated, &c., it was ordered that the above-named (*appellant*) should be at liberty on or before the day of, &c., to pay into this Court to the credit of this cause the sum of five hundred dollars, by way of security, that he the said (*appellant*) would duly prosecute his appeal to the Supreme Court from the judgment of this Court made in this cause on the day of, &c., and for the payment of such costs and damages as may be awarded against him by the Supreme Court, and that the said (*appellant*) duly paid into this Court to the credit of this cause the said sum of five hundred dollars, and the same now remains in this Court as security as aforesaid.

1169

Another form, where security given by payment into Court.

Given under my hand and the seal of the said Court, this day of, &c.

[L.S.]

A.B.,

Accountant.

In the Supreme Court of Canada.

Between—*A.B.* (Plaintiff), [*Appellant*].

and

C.D. and *E.F.* (Defendants), [*Respondents*].

I, *A.B.*, intend to appear in person in this appeal (*a*) and I require that all papers required to be served on me herein

1170

Notice to be filed of party appearing in person on appeal.

(*a*) See S. C. Rule 17.

be served on me at (naming some place in the City of Ottawa.) (a).

Dated, &c.

(Signed)

H.B.,
Appellant in person.

(Style of cause: see No. 1170.)

1171

Suggestion to be filed of appearance of solicitor in appeal for party who appeared in person in Court below. (b)

Y.Z., Solicitor for the above-named C.D., appears for him on this appeal.

Dated, &c.

(Signed)

Y.Z.,
Solicitor for the Respondent.

Factum, or Points of Argument.

(Style of cause: see No. 1170.)

1172

Factum.

(State succinctly the facts and the several points of law which he intends to rely on, in the appeal, and specify the cases intended to be cited in support of each point. References may often usefully be made to the evidence or material passages in the written opinions of the Judges in the Courts below.)

Dated, &c.

(Signed)

C.D.,
Counsel for the [Appellant].

(Style of cause: see No. 1170.)

1173

Notice of hearing. (c)

Take notice, that this appeal will be heard at the next Session of this Court, to be held at the City of Ottawa, on the day of , 19 .

Dated, &c.

(Signed) D.L.,
Appellant's Solicitor.

To A.F., Esquire,
Respondent's Solicitor.

(a) S. C. Rule 20.

(b) S. C. Rule 19.

(c) This notice must be served 15 days before the first day of the session: S. C. Rule 14.

*Suggestions for Adding Parties, &c.**(Style of cause: see No. 1170.)*

And now on the day of , it is suggested and manifestly appears to the Court here that on the day of , &c., the above-named respondent *C.D.* departed this life [having first duly made and published his last will and testament, whereby he appointed *W.G.* the sole executor thereof, and the said *W.G.* afterwards duly proved the said will, and letters probate thereof were duly granted to him by the proper Court in that behalf; *or* whereby he devised the lands and premises in question unto *W.G.*, *or*, intestate, and letters of administration to his said estate were afterwards granted by the Surrogate Court of, &c., to one *W.G.*, who is now the sole personal representative of the said *C.D.*, deceased], by reason whereof all the right, title and interest of the said *C.D.* of, in or to the subject matter of this appeal hath become vested in the said *W.G.*; wherefore he is hereby made a party respondent to this appeal in (*d*) place and stead of the said *C.D.*, deceased.

G.H.,
Appellant's Solicitor.

1174

Suggestion to be filed for the purpose of adding parties in consequence of death or insolvency of any of the parties respondent.

(Style of cause: see No. 1170.)

And now on the day of , it is suggested by *J.B.*, the [administrator *or* executor of *or* devisee named in the last will and testament] of *A.B.*, the above-named appellant, and it manifestly appears to the Court here that on the day of, &c., *A.B.*, the above-named appellant, departed this life (*proceed as in preceding form to the word wherefore and conclude*): wherefore the said *J.B.*, as such [administrator, *or*, executor, *or*, devisee, as the case may be], claims to prosecute this appeal as appellant, in the place and

1175

Suggestion of the death of sole appellant, by his representatives, in whom the subject matter of appeal has vested. (*e*)

(*d*) S. C. Rule 36. This rule appears to require that a suggestion shall be filed wherever it is necessary by reason of death, or transmission of interest, to add any party to the proceedings, and it would seem that the suggestion must be filed in the case of the death of a sole respondent, notwithstanding that the Act seems to contemplate that the proceedings should be carried on in that event merely upon notice being given to the deceased respondent's representatives. See S. C. Act, sec. 57.

(*e*) The leave of the Court or a Judge must be obtained for filing this suggestion. See S. C. Act, sec. 55.

stead of the said *A.B.*, deceased, and he is hereby made a party appellant accordingly.

G.H.,
Solicitor for the said *J.B.*,
Executor of the said *A.B.*, deceased.

[A suggestion in the case of the insolvency of, or other transmission of interest by, any of the parties, can be readily framed from the foregoing forms.]

(Style of cause: as in No. 1170.)

1176

Suggestion in case of death of one of several respondents, where the interest of the deceased survives to the surviving respondent. (a)

And now on this day of, &c., it is suggested, and manifestly appears to the Court here, that *E.F.*, one of the above-named respondents, on the day of, &c., departed this life, by reason whereof his interest in the subject matter of this suit survived to, and is now vested in, the above-named *C.D.* Wherefore the appellant is at liberty to continue the prosecution of the said appeal against the said *C.D.* alone.

E.B.,
Solicitor for the Appellant.

1177

Notice of filing suggestion, and of intention of appellant to prosecute appeal. (b)

In the Supreme Court of Canada.

Between—*A.B.* (Plaintiff), Appellant,
and
C.D., since deceased, and *W.G.*, added as

a party by suggestion (Defendant) Respondent.

Take notice, that I have this day filed a suggestion [adding you as a party respondent to this appeal, in the place of the above-named *C.D.*, deceased], which suggestion is in the words and figures following (*copy suggestion, and when new parties are added as respondents, continue*: And take notice,

(a) A suggestion of this nature, it would seem, can be entered without the leave of the Court or a Judge. See S. C. Act, sec. 56.

(b) See Supreme Court Act, sec. 57. There is no provision in the Act or in the rules for service of notice of the filing of the suggestion; but it would seem that notice thereof should in some way be given to all parties added. Section 57 in effect provides that a calendar month's notice of the appeal and of the appellant's intention to continue the suit shall be given to the representatives of a deceased respondent or respondents.

that I intend to proceed with this appeal, and that the same will be heard (*continue as in Form No. 1173*).

Dated, &c.

To (*party added*.)

G.H.,
Appellant's Solicitor.

SECTION IX.—APPEALS TO THE PRIVY COUNCIL.

Appeal Bond (on Appeal to the Privy Council). (Rule 831.) **1178**

Know all men by these presents, that we (*naming all the obligors, with their places of residence and additions*), are jointly and severally held and firmly bound unto (*naming the obligees, with their places of residence and additions*), in the penal sum of two thousand dollars, for which payment well and truly to be made, we bind ourselves, and each of us by (*d*) himself, our, and each of our heirs, executors, and administrators, respectively, firmly by these presents.

Dated this day of in the year of our Lord, 19 .

Whereas (*the appellant*) alleges, that in the giving of judgment in a certain action in His Majesty's Court of Appeal for Ontario, between (*the respondent*) and (*the appellant*), manifest error hath intervened, wherefore (*the appellant*) desires to appeal from the said judgment to His Majesty, in His Majesty's Privy Council.

Now the condition of this obligation is such, that if (*the appellant*) do and shall effectually prosecute such appeal, and pay such costs and damages as shall be awarded, in case the judgment aforesaid to be appealed from shall be affirmed, or in part affirmed, then this obligation shall be void, otherwise shall remain in full force.

[*Where it is also desired to give security to stay execution additional clauses should be added similar to those in Form 1161.*]

Con. Rules, 1888, Form 210.

See No. 1161, the affidavit should be styled, In the Court of Appeal for Ontario. **1179**
Affidavit of justification.

See No. 1161.

1180
Bond to stay execution, on appeal to Privy Council.

(c) Con. Rules, 1897, Form 198.

(d) See note (b) on p. 692.

CHAPTER XVIII.

EXTRAORDINARY REMEDIES.

SECTION I.—ARREST FOR DEBT.

1181

Affidavit for
an order for
arrest.]

(*Formal parts: see No. 744.*)

I, A.B., of _____, in the County of _____, the
above-named plaintiff (a) make oath and say as follows:

1. C.D., the above-named defendant is justly and truly
indebted to me in the sum of \$ _____ (b) for (*stating the
cause of action in accordance with the claim indorsed on
the writ of summons*).

[Or, I have sustained damage to the amount of \$ _____ by
reason of, *stating the cause of action against the defendant in
accordance with the claim indorsed on the writ of summons.*]

2. (*Here state the facts and circumstances which shew
good and probable cause for believing that the defendant
unless forthwith apprehended will quit Ontario with intent
to defraud his creditors generally or the plaintiff in parti-
cular (c).*)

3. For the reasons aforesaid I verily believe that the de-
fendant C.D., unless he be forthwith apprehended is about to
quit Ontario with intent to defraud his creditors generally
and me in particular.

(*Formal parts: see No. 744.*)

1182

Affidavit in
support of ap-
plication for
an order for
arrest.

I, A.B., of (*residence and addition*), the above-named
plaintiff, make oath and say as follows:—

1. *State, concisely, the institution and object of the action;
as thus:* This action was commenced on the _____ day of _____,
19 _____, against the above-named defendant A.B., to obtain an
account of all moneys received by the said defendant for or

(a) Or the affidavit may be by a third person cognizant of the
facts of the indebtedness, etc., of defendant to the plaintiff, in which
case the form will be altered accordingly.

(b) At least \$100. See H. & L. notes to Rule 1021.

(c) See *ib.* and R. S. O. 1897 c. 80, s. 1.

on my account, or for my use, as my agent in the management of my estate called E., in the county of _____, as in the said writ of summons mentioned, and of the application of such moneys; and for payment by the said defendant to me of what, on taking such account, should be found due from him to me.

2. *State the existence of a debt from the defendant; as thus:* The two accounts now produced and shewn to me, and marked respectively F. and G., have been rendered to me by the said defendant, and purport to be his accounts as such agent as aforesaid. It appears by the said accounts that the said defendant is indebted to me in the sum of \$ _____, on balance thereof. I have investigated the said accounts; and I say positively [*or, to the best of my belief*] that the said defendant C.D. is now justly and truly indebted to me in the sum of \$ _____ (a) and upwards, on the balance of the said accounts (*or as may be*).

3. (*Shew defendant's intention to go abroad; and deponent's means of knowledge.*)

4. From the facts aforesaid, and for the reasons hereinbefore stated, I verily believe that the said defendant C.D., unless he be forthwith apprehended will quit the Province of Ontario with intent to defraud me and his other creditors; and that the debt due to me as aforesaid from the said defendant will be in danger of being lost to me by the said defendant quitting the jurisdiction of this Honourable Court.

Order for Arrest. (Rule 1021.)

In the High Court of Justice.

(*Name of Judge*)

In Chambers.

(*Date.*)

Between

_____, Plaintiff,
and _____
Defendant.

1. Upon the application of _____ and upon reading the affidavit of _____ filed, and upon hearing the solicitor [*or, counsel*] for _____.

1183

Order for
arrest (*d*).

2. It is ordered that the Sheriff of the county, united counties or city where *C.D.*, the defendant [*or*, one of the defendants], may be found, do forthwith arrest and take, or if already in custody, do detain the said *C.D.*, and him safely keep until he shall have given security in this action for the sum of \$ (the amount which may be ordered, or in alimony cases the proper amount under Rule 1022) or shall by other lawful means be discharged from custody.

3. And it is further ordered that a copy of this order be served by the said Sheriff on the said *C.D.*

4. And it is further ordered that the said do, within ten days after his arrest under this order, cause security to be put in for him in this Court and in this action, either by the deposit in Court of the said sum of \$, or by bond or other security, pursuant to the Rules of Court in that behalf, conditioned that the defendant will pay the amount by any judgment in the action adjudged to be recovered or directed to be paid either as a debt or for damages or costs, or will render himself to the custody of the Sheriff of (*naming the county, or united counties or city having a Sheriff in which the action was commenced*) or that his sureties will do so for him.

See Con. Rules, 1888, Form 155.

Bail Bond to the Sheriff. (Rule 1030.)

1184

Bail bond to
the Sheriff. (a)

Know all men by these presents that we *C.D.* (*the defendant arrested*) of *E.F.* of and *G.H.* of , are held and firmly bound to Esq., Sheriff of the county [*or*, city] of in the sum of (*usually double the sum indorsed on the writ*) to be paid to the said Sheriff or his attorney, executors, administrators or assigns, for which payment well and truly to be made, we bind ourselves, and each of us for himself, our and each of our heirs, executors and administrators firmly by these presents.

Dated this day of

Whereas the above bounden *C.D.* was on the day of , taken by the said Sheriff under an order for arrest issued out of the High Court of Justice bearing date the day of , in an action at the suit of *A.B.*

And whereas a copy of the said order and every memorandum, notice and indorsement, subscribed thereto or made thereon was delivered to the said *C.D.*

And whereas he is by the said order required to cause security in the said action to be put in for him in the said Court within ten days after his arrest under said order.

Now the condition of this obligation is such that if the said *C.D.* do cause security to be put in for him in the said action, as required by the said order, then this obligation to be void, otherwise to remain in full force.

Signed, sealed and delivered	}	<i>C.D.</i>	[L.S.]
in the presence of		<i>E.F.</i>	[L.S.]
		<i>G.H.</i>	[L.S.]

(To be indorsed on bond to the Sheriff.)

I, *C.D.*, the within named Sheriff of _____ have at the **1185** Assignment of bail bond. request of *A.B.*, the plaintiff also within named, assigned to him, the said *A.B.*, the within written bail bond and all benefit and advantage arising therefrom, pursuant to the statute in that case made and provided.

In witness whereof, I have hereunto set my hand and seal this _____ day of _____, A.D. 19 . .

Signed, sealed and delivered by	}	Sheriff.
the within named Sheriff in		
the presence of (<i>b</i>)		

Bond on Arrest on Mesne Process. (Rule 1037.)

Know all men by these presents that we (*naming the de-* **1186** Bond as security in the action. (*c*) *fendant arrested and the sureties with their places of residence and additions*) are jointly and severally held and firmly bound unto (*naming the plaintiff with his place of residence and addition*) in the penal sum of (*double the amount directed by the order to be secured subject to Rule 1036*) for which payment, well and truly to be made, we bind ourselves and each of us by (*d*) himself, our and each of our heirs, executors and administrators respectively, firmly by these presents.

Dated this _____ day of _____, A.D. _____

(*b*) The Statute 4 Anne, c. 16, s. 20, required the assignment to be in the presence of two or more credible witnesses. See H. & L. notes to Rule 1031. That statute has not been included in R. S. O. 1897, vol. 3.

(*c*) Con. Rules, 1897, Form 200.

(*d*) See note (*b*) to No. 1161.

Whereas the above bounden (*naming the person arrested*) was arrested under an order for arrest (*a*).

Now the condition of this obligation is such that if the said (*naming the defendant arrested*) shall pay the amount by any judgment in said action recovered or directed to be paid, either as debt or for damages or costs, or shall render himself or shall be rendered by the said (*naming the sureties*) to the custody of the Sheriff of _____ then this obligation shall be void, otherwise shall remain in full force.

In witness whereof we have hereto set our hands and seals the day and year above written.

Signed, sealed and delivered
in presence of _____

Affidavit of Execution. (Rule 1037.)

(To be appended to the bond.)

1187

Affidavit of
execution. (b)

In the High Court of Justice (*or as may be*).

Between _____, Plaintiff,
and _____, Defendant.

I, _____ of the _____ of _____
in the County of _____ (*addition*)
make oath and say as follows:

1. I was personally present and did see the within [*or*,
annexed] instrument duly signed, sealed and executed by
parties thereto.
2. The said instrument was so executed at
3. I know the said parties
4. I am a subscribing witness to the said instrument.

Sworn, &c.

Affidavits of Justification. (Rule 1037.)

(Formal parts: see No. 1187.)

1188

Affidavits of
justification.
(c)

I, A.B. (*name of one surety*) of _____ (*addition*) make
oath and say as follows:

1. I am one of the sureties in the annexed bond.

(a) This clause might better be expressed in the same terms as the corresponding clause in No. 1184, shewing the title of the action.

(b) Con. Rules, 1897, Form 201.

(c) Con. Rules, 1897, Form 202.

2. I am a resident inhabitant of Ontario and am a householder [*or, freeholder*] in the of .

3. I am worth and own property to the amount of (*the penalty in the bond*) over and above what will pay all my debts (*if surety in any other matter add*, and every other sum for which I am now liable or for which I am now bail or surety).

4. I am not bail or surety for any plaintiff or defendant except in this action (*or if bail or surety in any other action add*, except for *G.H.* in an action in the High Court of Justice, in which *X.Y.* is plaintiff, and *G.H.* is defendant in the sum of , *as the case may be, specifying the several causes or matters with the Court in which each is and the sums for which the deponent is bail or surety.*)

5. I have not been indemnified for entering into the said bond by the solicitor or solicitors concerned for the defendant.

6. And I, *C.D.*, &c. (*naming the other surety and proceeding to the like effect; or separate affidavits may be made*).

The above-named deponents *A.B.* and
CD. were sworn before me herein
 at, &c., the day of A.D. 19 .)

A Commissioner in H. C. J., &c.

Notice of Filing Bond. (Rule 1040.)

(Short style of action.)

Take notice that have this day filed in the Central Office, Osgoode Hall, Toronto (*or other proper office*), a bond of the defendant given pursuant to the order for arrest herein, and that the names of the sureties therein are *A.B.*, of in the County of (*addition*) and *C.D.*, of the of in the (*addition*).

Dated this day of , A.D.

To

Plaintiff's solicitor.

Solicitor for defendant.

*Appointment for Allowance of Bond. (Rule 1040.)**(Short style of action.)***1190**

Appointment for
allowance of
bond. (a)

I hereby appoint day the day of ,
19 , at my office in at the hour of o'clock
noon, to consider the allowance of the bond given
by defendant pursuant to the order for arrest herein, at which
time and place let the parties attend.

Dated, &c.

*Signature of officer.**Certificate of Allowance of Security. (Rule 1041.)**(Short style of cause.)***1191**

Certificate of
allowance. (b)

I (*officer allowing bond or plaintiff or his solicitor*)
hereby certify that the security to be given by the defendant
under the order for arrest herein, dated the day of
A.D. has been this day allowed.

Dated, &c.

*Signature of officer, &c.**(Formal parts: see No. 744.)***1192**

Affidavit to
obtain out of
Court money
paid in in
lieu of giving
a bond to the
Sheriff.

I, , solicitor for the above-named defendant
make oath and say as follows:

1. The said defendant on or about the day of ,
was arrested by the Sheriff of the County of , pur-
suant to an order for arrest issued herein dated the
day of .

2. The defendant thereupon to obtain his release from
custody paid into Court pursuant to Rule 1030 the sum of
\$ being the amount named in the said order for arrest
together with the sum of \$ to answer costs (c).

3. Security in this action has been duly given by (*stating
how given*) pursuant to the Rules of Court (d) [*or*, the de-
fendant has been duly rendered in discharge of the bond
given herein as security in this action pursuant to the Rules
of Court].

(a) Con. Rules, 1897, Form 204.

(b) Con. Rules, 1897, Form 205.

(c) The payment into Court should also be proved by a certificate
of the Accountant of the Supreme Court.

(d) Rules 1036 *et seq.*

(Formal parts: as in No. 902.)

and it appearing that security in this action has been duly given [or, that the defendant has been duly rendered in discharge of the bond given herein as security in this action] pursuant to the Rules of Court.

2. It is ordered that the moneys paid into Court by the defendant pursuant to Con. Rule 1030 be forthwith paid out of Court to the defendant together with any interest accrued thereon.

(Formal parts: see No. 744.)

1 and 2 as in No. 1192. (The order for arrest may also be made an Exhibit.)

3. Security in this action has not been given though pursuant to the said order the same should have been given on or before the day of

1193

Order thereon.

1194

Affidavit to enable the plaintiff to obtain out of Court money paid in as security to the Sheriff.

(Formal parts: see No. 902.)

and it appearing that the defendant has not given security in this action.

1195

Order thereon.

1. It is ordered that the sum of \$ (the amount named in the order for arrest) with the interest accrued thereon be forthwith paid out of Court to the plaintiff.

2. And it is further ordered that the costs of the plaintiff up to the time limited for giving security in this action be forthwith taxed, and that the sum of \$40 paid into Court by the defendant pursuant to Con. Rule 1030 (and any interest accrued thereon) be forthwith paid out of Court to the plaintiff and applied in payment [or, in payment *pro tanto*] of the amount so taxed.

Proceedings against the Sheriff.

1196

Returns to an order for arrest.

See No. 1109 (3).

(1) *Non est inventus.*

On the day of , I took the within-named (2) *Cepi C.D.* in my bailiwick and him safely kept until he gave me *corpus.*

security according to law in the within-named action as within ordered.

(3) The like
and that de-
fendant is in
prison.

Or, on the day of , I took the within-named *C.D.*, whose body I have ready as within ordered [*or*, whose body remains in the prison of His Majesty the King, under my custody].

The answer of

Esq.,
Sheriff.

(4) Rescue.

Pursuant to the within order for arrest, I made my warrant in writing to and my bailiffs, jointly and severally to take and arrest the within-named *C.D.*; by virtue of which warrant the said and afterwards at in the of within my bailiwick, took and arrested the within-named *C.D.*, according to the directions of the within order, and safely kept him in their custody until of , and other persons to me and to my said bailiffs unknown, on at afore-said, with force and arms assaulted and illtreated my said bailiffs and then and there rescued the said *C.D.* out of the custody of my said bailiffs and the said *C.D.* then and there, with force and arms rescued himself and escaped out of the custody of my said bailiffs against the peace of our Sovereign Lord the King; and afterwards the said *C.D.* is not found in my bailiwick.

(5) Discharge
on order or
supersedeas.

Pursuant to the within order for arrest, I on took the within named *C.D.* and safely kept him in His Majesty's prison [*or*, the common gaol] in and for the county of , until afterwards on by virtue of another order [*or*, a writ] to me directed and to the within order for arrest annexed the said *C.D.* to be delivered out of said prison [*or*, gaol]

The answer of

, Esq.,
Sheriff,

(*For Commencement, see the preceding forms.*)

(6) Delivery
on writ of
habeas corpus.

until afterwards to wit on the day of , I received His Majesty's writ of *habeas corpus* commanding me to have the body of the said *C.D.* before (*according to the directions of the writ*); by virtue of which writ and in obedience thereto I had the body of the said *C.D.* with the said writ and the return of the within cause before (*according to*

the writ) who then received of me the body of the said *C.D.* and committed him to the King's prison, and altogether discharged and exonerated me from further keeping the said *C.D.*

The answer of _____, Esq.,
Sheriff.

Pursuant to the within order for arrest I on _____ (7) *Languidus*
took the within-named *C.D.* who remains in His Majesty's *in prisona.*
prison, for the County of _____, under my custody so weak
and infirm that, without great peril and danger of his life,
I cannot have his body before (*as ordered*).

The answer of _____, Esq.,
Sheriff.

(*Formal parts: see No. 902.*)

It is ordered that the Sheriff of the County of _____ do **1197**
within six days next after the service of this order, peremp- **Order to bring**
torily bring into Court the body of the defendant. **in the body.**

(*Formal parts: see No. 744.*)

I, _____ of the _____, [clerk to the] plaintiff's **1198**
solicitor herein, make oath and say as follows:— **Affidavit of**
service of

1. I did on the _____ day of _____, personally serve,
&c. (*as in No. 766*).

2. No security in this action has been given by or on
behalf of the defendant.

(*Formal parts: see No. 902.*)

It is ordered that a writ of attachment issue against the **1199**
Sheriff of the County of _____, for his contempt in **Order for**
not bringing into Court the body of the defendant. **attachment**
for not bring-
ing the body.

*Discharge from Custody.***1200**

Notice of motion for discharge.

(*Formal parts: see No. 403.*)

for an order [*where proper* (a) setting aside the order for arrest upon the ground that *stating any grounds of irregularity* and for an order] discharging the defendant out of custody [and that an *exoneretur* be entered upon the bond given herein by the defendant, or, that the same be delivered up to be cancelled, or, and that the money paid into Court by the defendant as security be paid out to him] upon the ground that (*stating the same shortly*).

1201

Affidavit in support of motion.

(*The affidavit will shew circumstances which negative the intention to leave Ontario, or it may state any facts which shew that the defendant though about to leave Ontario was not liable to arrest. See Holmested & Langton, notes to Rule 1047.*)

1202

Order thereon.

(*Formal parts: see No. 902.*)

1. It is ordered that the order for arrest issued herein be and the same is hereby set aside (a).

2. It is ordered that the defendant be forthwith discharged from custody under the writ of *capias ad respondendum* issued herein [*where considered necessary*, and that a writ of *supersedeas* do forthwith issue out of this Court accordingly directed to the Sheriff of the County of].

And it is further ordered that the plaintiff do forthwith.

Setting aside or Staying of Proceedings against the Sheriff or upon the Security given in the Action.

1203

Affidavit to set aside a regular (b) attachment at the instance of defendant.

In the High Court of Justice.

The King against the Sheriff of

(In the action of *A.B. v. C.D.*)

I, *C.D.*, of make oath and say as follows:—

1. I was on or about arrested at the suit of the above-named plaintiff, upon an order for arrest issued in the

(a) As to where such an order is proper, see Holmested and Langton notes to Rule 1047.

(b) Irregular proceedings may be set aside as in other cases of irregularity on notice of motion setting out the irregularities, and supported by affidavits shewing the proceedings complained of.

said action, and I did on or about _____ give a bail bond to the Sheriff of the County of _____ by whom I was so arrested [or, if money was paid into Court, (c) pay into Court the sum of _____ dollars named in the said order for arrest, together with forty dollars to answer costs, pursuant to the Rules of Court in that behalf] and I was thereupon discharged out of custody.

2. Security in the said action has since been duly given by me [where security has been by bond, add: and the bond given in that behalf has since been duly allowed], pursuant to the Rules of Court in that behalf [or, where the defendant has been rendered, instead of stating that security has been given and the bond, if any, allowed, state the render thus: Security in the said action has since been given by me, and I did on the _____ day of _____, duly render myself in discharge of said security]. (d)

3. On the _____ an attachment issued out of this Honourable Court against the Sheriff of the County of _____ for not having obeyed an order to bring in my body, as I have been informed (by my solicitor) and verily believe.

4. I have a good defence to this action upon the merits, as I am advised and verily believe (e).

Sworn, &c.

(Style of cause as in the preceding Form.)

We, _____ of _____ and _____ of _____ (the sureties) severally make oath and say as follows:

1. C.D., the above-named defendant was on or about the _____ arrested in the said action at the suit of the above-named plaintiff, and we, together with the said C.D., after the said arrest on the _____ day of _____ duly executed a bail bond to the Sheriff of the County of _____ in the said action, and the said C.D. was thereupon discharged out of custody.

1204
Affidavit for
application on
the part of
sureties to the
Sheriff.

(c) See Rule 1030.

(d) It would seem that proceedings will be stayed as a matter of course on security in the action being given and, where a bond is given, allowed, and on payment of costs, since under our procedure, as under Imp. Act 1 & 2 V. c. 110, the bailable proceedings are merely collateral to the main proceedings in the action and cannot affect the time of trial.

(e) See Rule 1046.

2. (*As in the preceding Form, mutatis mutandis*).

3. On the day of an attachment issued out of this Honourable Court against the said Sheriff for not having obeyed an order to bring in the body of the said *C.D.*, as we have been informed (by our solicitor) and verily believe.

4. This application is really and truly made on the part of us, the above-named deponents the sureties in the said bail bond for the said *C.D.* at our own expense, and for our own indemnity only, and without any collusion with the said *C.D.* (*e*)

Sworn, &c.

(*Style of cause as in No. 1203.*)

1205

Affidavit for application on the part of the sheriff.

I, , of , Sheriff [*or, officer of the Sheriff as the case may be*], of make oath and say as follows:

1. On the day of pursuant to the order for arrest issued in the said action (*by virtue of a warrant to me directed by the said Sheriff*) I arrested *C.D.*, the above-named defendant, and kept and detained him in my custody until when a bail bond was duly executed conditioned for the said *C.D.*'s putting in security in the said action [*or, when the sum of \$ named in the order for arrest in said action, together with \$40 to answer costs, was paid into Court by the said C.D. as security to the plaintiff therein that the said C.D. would cause security in the action to be put in pursuant to the order for arrest*], whereupon the said *C.D.* was discharged out of custody.

2. (*As in Form No. 1203, mutatis mutandis*).

3. On the day of an attachment issued out of this Honourable Court against me [*or, against the said Sheriff of the County of*] for not having obeyed an order to bring in the body of the said *C.D.*, as I have been informed (by my solicitor) and verily believe.

4. This application is really and truly made on the part of [me this deponent at my own expense and for my indemnity only] and without any collusion with the said *C.D.* (*a*)

Sworn, &c.

(*a*) See Rule 1046 and *R. v. Sheriff of Cheshire*, 3 M. & W. 605; 6 Dowl. 709.

*(Style of action brought on the bail bond.)***1206**

1. I was on or about the day of arrested at the Affidavit for
 suit of A.B. under an order for arrest issued in a certain application at
 action in this Honourable Court in which the said A.B., is instance of the
 plaintiff and I am defendant, and on the day of I defendant.
 gave a bail bond to the Sheriff of the County of by whom
 [or, by whose officer] I was arrested, and I was thereupon
 discharged out of custody.

2. *(As in Form No. 1203, with the alterations similar to those made in clause 1 above, rendered necessary by reason of the affidavit not being in the action in which the arrest was made.)*

3. The said A.B., on or about the day of took
 an assignment of the said bail bond, as I have been informed
 (by our solicitor) and verily believe, and afterwards he com-
 menced this action upon the same against me.

4. *(Similar to 4 in Form No. 1203, with the necessary formal alterations.)*

*(Style of the action brought on the bond.)***1207**

1 and 2. *(As in Form 1203, with the alterations simi-* Affidavit for
lar to those made in Clause 1 of Form 1206, rendered neces- application at
sary by reason of the affidavit not being in the action in the instance
which the arrest was made.) of the sureties.

3. The said A.B. on or about the day of took an
 assignment of the said bail bond, as we have been informed
 (by our solicitor) and verily believe, and afterwards he com-
 menced this action upon the same against us.

4. *Similar to 4 in Form 1203, making the necessary formal alterations.)*

*(Style of action against the Sheriff.)***1208**

1 and 2. *(See preceding Form.)*

3. The said A.B. on or about the day of took Affidavit for
 an assignment of the said bail bond, as I have been informed application at
 (by my solicitor), and verily believe and afterwards he com- the part of the
 menced this action upon the same. Sheriff.

4. *(See preceding form.)*

*Surrender of Defendant.***1209**

Certificate of
Sheriff as
to surrender.

I, _____, Sheriff of the County of _____, hereby certify.

That *C.D.*, the above-named defendant, this _____ day of _____ has rendered himself [*or*, has been rendered] in discharge of his sureties at the suit of the above-named plaintiff and is now actually in my custody.

Sheriff of

*(Style of action.)***1210**

Notice of
render.

Take notice that the above-named defendant has this day rendered himself [*or*, was this day rendered] in discharge of his sureties in this action at the suit of the above-named plaintiff, and is now actually in the custody of the Sheriff of the County of _____

Dated this _____ day of _____

Yours, &c.,

Defendant's solicitor.

To, _____ (*Or*, solicitor for defendant's sureties.)

Plaintiff's solicitor.

*(Style of action.)***1211**

Affidavit of
service of
motion of render.

I, _____ make oath and say:

1. That I did on the _____ day of _____ personally serve _____, the plaintiff's solicitor in this action, with a true copy of the notice hereunto annexed [*if so* by delivering the same to Mr. _____, a clerk in the office of the said solicitor, at his office in the County of _____].

Sworn, &c.

*(Style of action.)***1213**

Judge's order
cancelling
security and
discharging
sureties.

1. Upon the application of [the defendant *or* _____ sureties for the defendant in this action] and upon hearing read the certificate of the Sheriff of the County of _____ the notice to the plaintiff's solicitor of the render of the defendant and the affidavit of _____ as to the service thereof, and upon hearing the solicitors for the plaintiff and defendant.

2. It is ordered that the security given in this action be and the same is hereby cancelled, and that the sureties therein be and they are hereby discharged from all liability in respect to the same.

SECTION II.—ABSCONDING DEBTORS (a).

(Formal parts: see No. 744.)

I, _____, of _____ the above-named plaintiff (or according to the fact) make oath and say as follows:

1214
Affidavit to obtain attaching order.

1. (See Clause 1 of affidavit for order for arrest, No. 1181.)

2. (State the facts shewing good reason to believe that the defendant has departed from Ontario with intent to defraud the plaintiff of his just dues or to avoid being arrested or served with process.

State also the place to which the absconding debtor has fled, or that the deponent is unable to obtain any information as to what place he has fled to.) (a)

3. From the facts and for the reasons aforesaid I verily believe that the said C.D. has gone to (stating the place), [or, has gone to some place in the United States of America unknown to me, and I cannot obtain any information as to where the said defendant now is] with intent to defraud me of my just dues aforesaid, or to avoid being arrested or served with process.

4. The said C.D., at the time of his so leaving Ontario was possessed of considerable real and personal property, credits and effects not exempt by law from seizure to his own use and benefit, amounting in value to about \$

(Affidavits of two other persons are required stating as follows:

1215
Affidavits of two other persons. (b)

1. I am well acquainted with C.D., the above-named defendant, and I have good reason to believe and do believe that the said C.D., has departed from Ontario with intent to defraud the plaintiff herein, or to avoid being arrested or served with process.

(a) See R. S. O. 1897, c. 79, and Rules 1058 et seq.

(b) Required by R. S. O. 1897, c. 79, s. 2.

(Formal parts: as in No. 902.)

1216

Attaching
order against
an absconding
debtor.

1. It is ordered that the Sheriff of do attach, seize and safely keep all the real and personal property, credits and effects, together with all evidences of title or debts, books of account, vouchers and papers belonging thereto of (*defendant*) to secure and satisfy the (*plaintiff*) a certain debt or, demand amounting to \$ with his costs of suit and to satisfy the debts and demands of such other creditors of the said (*defendant*) as shall duly place their orders of attachment in the hands of the said Sheriff or otherwise lawfully notify him of their claims and duly prosecute the same.

2. And it is further ordered that the said (*defendant*) within days after the service of this order on him inclusive of the day of such service, do cause security in this action be put in for him in this Court and in this action in the sum of \$ either by the deposit in Court of the said sum of \$ or by bond or other security pursuant, &c. (*as in No. 1183*).

3. And it is further ordered that in default of the defendant's putting in security in this action as aforesaid, the said (*plaintiff*) may by leave of the Court or a Judge proceed therein to judgment and execution, and may sell the property so attached.

4. And it is further ordered that the said Sheriff, as soon as this order has been executed do return the same with the inventory and appraisement of what he has attached hereunder.

5. This order is issued in duplicate pursuant to the Rules of Practice. (a)

SECTION III.—DISTRESS AND REPLEVIN.

1217

Warrant to
distrain.

To , my bailiff:

I authorize and require you to distrain the goods and chattels [and growing crops] in and upon the dwelling house [or, farm, or, lands] and premises of in the of in the County of for \$, being rent due to me for the same on last and to proceed thereon for the recovery of the said rent as the law directs.

(a) See Con. Rule 1059.

1218

An inventory of the goods and chattels distrained by me ^{Inventory of goods distrained.}
 [if so add as bailiff of], this day of
 A.D. 19 , in the dwelling house or, farm, or, lands], and
 premises of situate at in the County of (if
distress made as bailiff, add, by the authority and on the
 behalf of the said] for \$, being rent due to me
 [or, to the said] on last.

In the House.

In room (*setting out the goods*).
 &c., &c.

In the Stable, &c.

Inventory as above, No. 1218, then add:

1219

Notice of distress.

To and all whom this may concern:

Take notice that I have this day distrained [or, that I, as bailiff to , your landlord, have this day distrained] on the premises above mentioned the goods and chattels specified in the above inventory for \$ being rent due to me [or, to the said] on last, for the said premises, and that unless you pay the said rent with the charges of distraining the same within five days from the date hereof, the said goods and chattels will be appraised and sold according to law.

(*If the fact*) the said goods have been removed from the said premises to

Dated the day of 19

1220

Notice of distress for growing crops.

(*Inventory as above No. 1218, then add.*)

To

Take notice that I have this day distrained [or, that I, as bailiff to , your landlord, have distrained] on the

lands and premises above mentioned, the several growing crops specified in the above inventory for \$, being rent due to me [or, to the said] on the last for the said lands and premises, and unless you pay the said rent with the charges of distraining the same, I shall proceed to cut, gather, make, cure, carry and lay up the crops when ripe in the barn or other proper place on the said premises, and in convenient time sell and dispose of the same towards satisfaction of the said rent, and of the charges of such distress, appraisement and sale, according to law.

Dated the day of , 19 .

1221

Request to
landlord to
continue in
possession.

To [and to his bailiff]:

I hereby desire you to keep possession of the goods and chattels which you have distrained for rent due from me to you [or, to the said] in the place where they now are, being for the space of days from the date hereof [on your undertaking to delay the sale of the said goods and chattels for that time to enable me to discharge the said rent *according to the fact*], and I will pay the expenses of keeping the said possession.

Dated the day of , 19 .

1222

Appraiser's
oath. (a)

You and each of you shall well and truly appraise the goods and chattels mentioned in this inventory according to the best of your judgment. So help you God.

1223

Memorandum
of appraiser's
oath. (b)

On the day of , of and of two appraisers were duly sworn by me , well and truly to appraise the goods and chattels mentioned in the within inventory according to the best of their judgment.

As witness my hand.

Present at the time of swearing }
the said and as }
above, and witness thereto.

(a) See R. S. O. c. 342, s. 16. The oath may be taken before any person authorized to administer an oath.

(b) To be indorsed upon the inventory: R. S. O. 1897, c. 342, s. 16.

1224

We, and being duly sworn by well Appraise-
 and truly to appraise the goods and chattels mentioned in ment.
 this inventory according to the best of our judgment and
 having viewed the said goods and chattels, do appraise and
 value the same at the sum of \$

Witness our hands this day of , 19 .

Witness:

Sworn appraisers.

(Formal parts: as in No. 744.)

1225

Affidavit for
 order of re-
 plevin. (a)

1. I am the plaintiff herein

2. On the day of A.D. 19 , (b) the above-
 named defendant by one his bailiff, entered my shop
 No. Street, in the of and wrongfully seized
 and took therefrom and out of my possession (*describe the
 chattels*).

3. I am the owner of the said (*chattels*) and am law-
 fully entitled to the possession thereof.

4. The value of the said to the best of my belief is -
 \$ (*stating the value of each chattel if more than one.*)

(*Additional clauses necessary in order to obtain the order
 on præcipe.*)

5. The said (*chattels*) were so wrongfully taken out of
 my possession within two months next before the making of
 this affidavit.

6. I am advised and believe that I am entitled to an
 order of replevin herein.

7. There is good reason to apprehend and I do apprehend
 that unless an order of replevin is issued herein without
 waiting for a motion the delay will materially prejudice my
 just rights in respect to the said property.

(*Additional clause necessary in order to obtain the order
 on præcipe in case the property was distrained for rent or
 damage feasant.*)

(a) The affidavit may be made by the person claiming the pro-
 perty or his servant or agent. If made by the servant or agent the
 Form will require to be altered accordingly.

(b) To obtain an order on præcipe this date must be within two
 months next before the date of making the affidavit: Con. Rule
 1068 (2).

5. The said property was taken under colour of a distress for rent [*or, damage feasant*]. (a)

1226

Order of replevin. (b)

Order of Replevin. (Rule 1071.)

In the High Court of Justice.

The Master in Chambers (*or as may be*).

[*Date.*]

Between—*A.B.*, Plaintiff,
and
C.D., Defendant.

1. Upon the application of the above-named plaintiff, and upon reading the affidavit of filed, and upon hearing the solicitor [*or, counsel*] for

2. It is ordered that the sheriff of (*here insert the name of the County, United Counties, District or City*), do without delay take the security required by Rule 1072 [*and where Rule 1074 applies add and Rule 1074*] and cause to be replevied to the plaintiff, his goods, chattels and personal property following, that is to say: (*here set out description of property as in the affidavit filed*), which the said plaintiff alleges to be of the value of \$, and to have been taken and unjustly detained [*or, unjustly detained, as the case may be*] by the defendant, *C.D.*, in order that the said plaintiff may have his remedy in that behalf.

3. And it is further ordered that the said Sheriff do forthwith, after the execution of this order, make return to (*insert here the officer in whose office the appearance in the action is to be entered*) what he shall have done in the premises, and do also return this order.

Con. Rules, 1888, Form 153.

Replevin Bond. (Rule 1072.)

1227

Replevin bond. (c)

Know all men by these presents, that we, *A.B.*, (*the plaintiff*) of *W.G.*, of and *J.S.*, of are jointly

(a) See Con. Rule 1068 (3).

(b) Con. Rules, 1897, Form 133.

(c) Con. Rules, 1897, Form 196.

and severally held and firmly bound to W.P., Esquire, Sheriff of the County of in the sum of of lawful money of Canada, to be paid to the said Sheriff, or his certain attorney, executors, administrators or assigns, for which payment to be well and truly made we bind ourselves, and each and every of us in the whole, our, and each and every of our heirs, executors and administrators, firmly by these presents, sealed with our seals.

Dated this day of , one thousand nine hundred and

The condition of this obligation is such, that if the above bounden A.B., do prosecute his suit with effect and without delay against C.D. for the taking and unjustly detaining [*or, unjustly detaining, as the case may be*] of his cattle, goods and chattels, to wit: (*here set forth the property distrained, taken or detained*), and (*d*) do make a return of the said property, if a return thereof shall be adjudged, and also [*to*] (*e*) pay such damages as the defendant shall sustain by the issuing of the order of replevin if the said A.B. fails to recover judgment in his said suit, and further do observe, keep and perform all rules and orders made by the Court in the said suit, [*where Rule 1074 applies, add* and do indemnify and save harmless the defendant from all loss and damage which he may sustain by reason of the seizure of the said cattle, goods and chattels (*as the case may be*) and of any deterioration of the same in the meantime in the event of their being returned and all costs and expenses which the defendant may incur, including reasonable costs not taxable between party and party], then this obligation shall be void, or else remain in full force and virtue.

Sealed and delivered)
in the presence of)

Form of Assignment.

Know all men by these presents, that I, W.P., Esquire, Sheriff of the County of , have at the request of the within-named C.D., the defendant in this cause, assigned over (*f*) this replevin bond unto the said C.D., pursuant to the Rules of the Supreme Court of Judicature in that behalf.

(*d*) See *Kennin v. Macdonald*, 22 Ont. 488-9.

(*e*) "To" should be "do."

(*f*) Here it might be well to add, "and by these presents do assign over."

In witness whereof, I have hereunto set my hand and seal
of office this day of , one thousand nine hundred
and

Sealed and delivered
in the presence of

Con. Rules, 1888, Form 208.

Praeipie Order of Withernam. (Rule 1078).

1228
Order of
Withernam.
(a)

In the High Court of Justice.

[Date.]

Between—*A.B.*, Plaintiff,
and
C.D., Defendant.

1. Upon the application of the plaintiff, and it appearing by the return of the Sheriff of the of , to the order of replevin made herein on the day of , that the goods, chattels and personal property, mentioned in the said order have been eloiigned by the defendant, *C.D.*, out of the bailiwick of the Sheriff of , to places to him unknown so that he could not replevy the same to the said plaintiff.

2. It is ordered that the said Sheriff do forthwith take in withernam the goods, chattels and personal property of the said defendant, *C.D.*, in his bailiwick, to the value of the goods, chattels and personal property by the said defendant, *C.D.*, before taken, and do forthwith deliver them to the said plaintiff to be kept by him until the said defendant, *C.D.*, delivers the goods, chattels and personal property last aforesaid to the said plaintiff.

3. And it is further ordered that if the said plaintiff shall give security to the said Sheriff as provided by law for the prosecution of the plaintiff's claims, and for the return of the goods, chattels and property so to be taken in withernam as aforesaid, if the return thereof shall be adjudged, then the said Sheriff do take security with two sufficient sureties from the said defendant, *C.D.*, to answer to the said plaintiff for the taking and unjustly detaining of his goods, chattels and personal property aforesaid.

4. And it is further ordered that the said Sheriff do forthwith make return to [the Central Office, Osgoode Hall, Toronto, or name the officer in whose office the proceedings

were commenced], what he shall have done in the premises, and do also return this order.

(Signature of officer.)

Con. Rules, 1888, Form 154.

(Formal parts: see No. 802.)

No appearance having been entered to the writ of summons [or, No defence having been delivered by the defendant] herein, it is this day adjudged that the plaintiff recover against the defendant damages to be assessed.

1229

Interlocutory judgment in replevin for the plaintiff in default of appearance or defence.

(Formal parts: see No. 802.)

Pursuant to the order of the Master in Chambers dated the day of 19 , whereby it is ordered that this action be dismissed for want of prosecution, and that the defendant be at liberty to sign judgment for a return of the cattle [or goods and chattels] in the [statement of claim] mentioned, and his costs of defence (*as may have been ordered*).

1230

Judgment for return of the goods.

It is this day adjudged that the plaintiff recover nothing against the defendant, and that the defendant have a return of the cattle [or goods and chattels] in the [statement of claim] mentioned, viz., (*describe them*), and that the defendant recover against the plaintiff his costs of this action to be taxed.

[Or, the judgment may be pronounced by the order by which the action is dismissed thus:—

1. It is ordered and adjudged that the plaintiff's action be and the same is hereby dismissed.

2. And it is further ordered and adjudged that the plaintiff do return to the defendant the cattle [or goods and chattels] in the statement of claim mentioned and replevied in this action, and do pay to the defendant his costs of this action to be taxed.

1231

Writ of re-
torno habendo.

Edward VII., &c. (*See No. 1064*).

To the Sheriff of

Greeting:

Whereas *C.D.* was summoned to be in our High Court of Justice to answer *A.B.* in an action for the taking and unjustly detaining of the cattle [*or goods and chattels*] of the said *A.B.* to wit (*describing them*). And (*recite the judgment under which the return is ordered*):

Therefore we command you that without delay you cause the said cattle [*or, goods and chattels*] to be returned to the said *C.D.*, and in what manner you shall have executed this, our writ, make appear to the Justices of our said High Court of Justice at Toronto, immediately after the execution hereof, and have you there then this writ.

(*Conclusion as in No. 1064.*)

SECTION IV.—INTERPLEADER.

Affidavit on Interpleader, by a Defendant. (*Rule 1104.*)

1232

Affidavit for In the High Court of Justice.
an inter-
pleader order
(stakeholder
defendant) (a)

Between Plaintiff,
 and
 Defendant.

I, of , the defendant in the above action, make oath and say as follows:

1. The writ of summons herein was issued on the day of 19 , and was served on me on the day of 19 , (*stating the condition of the action, &c.*).

2. The action is brought to recover . The said [*is or are*] in my possession, but I claim no interest therein.

3. The right to the said subject matter of this action has been and is claimed (*if claim in writing make the writing an exhibit*) by one (*state expectation of suit or that he has already sued*).

4. I do not in any manner collude with the said or with the above-named plaintiff, but I am ready to bring into

Court or to pay or dispose of the said in such manner
as the Court may order or direct.

Sworn at the day of 19 .
Before me

Con. Rules, 1888, Form 52.

Notice of Claim to Goods taken in Execution.
(Rule 1115.)

1233

In the matter of (Short Title.)

Sheriff's
notice to ex-
ecutor credi-
tor of an ad-
verse claim to
goods seized.

Take notice that *A.B.* has claimed the goods [*or, certain goods where only certain goods are claimed, here enumerate them*] taken in execution by the Sheriff of under the writ of issued in this action. You are hereby required to admit or dispute the title of the said *A.B.* to the said goods, and give notice thereof in writing to the said Sheriff within seven days from the receipt of this notice, failing which the said Sheriff may apply for an interpleader order. If you admit the title of the said *A.B.* to the said goods and give notice thereof in manner aforesaid to the said Sheriff you will only be liable for any fees and expenses incurred prior to the receipt of the notice admitting the claim.

Dated

(Sgd.) C.D.,
Sheriff of

To the plaintiff

56 V. c. 5, Sched. A.

Notice of Plaintiff of Admission or Dispute of Title of Claimant. (Rule 1115.)

1234

In the matter of (Short Title.)

Notice in re-
ply of admis-
sion or dis-
pute of
claimant's
title. (c)

Take notice that I admit [*or, dispute*] the title of *A.B.* to the goods [*or, to certain of the goods, namely (set them out)*] seized by you under the execution issued on the judgment in this action.

Dated

(Sgd.) E.T.,
Plaintiff's solicitor.

To the Sheriff of

56 V. c. 5, Sched. B.

(b) Con. Rules, 1897, Form 72.

(c) Con. Rules, 1897, Form 73.

1235

Notice of
motion by
Sheriff for an
interpleader
order.

See Form No. 403, p. 281.

1236

Affidavit for
an inter-
pleader order
on a Sheriff's
behalf.

In the High Court of Justice.

Between—*A.B.*, Plaintiff,
and
E.F., Defendant.

and

Between—*G.H.*, Plaintiff,
and
E.F., Defendant.

and

In the County Court of the County of

Between—*L.M.*, Plaintiff,
and
E.F., Defendant.

And between—*P.Q.* and *R.F.*, Claimants,
and
A.B., *G.H.* and *L.M.*, and
the Sheriff of the County
of Respondents.

I, *X.Y.*, of the in the County of , Sheriff of (a)
the said County, make oath and say, as follows:

1. Under and by virtue of a writ of *fiery facias* which appears to me to have been regularly issued out of the High Court of Justice in the action firstly above mentioned directed to the Sheriff of the County of commanding that he should cause to be levied of the goods and chattels of the above-named defendant \$437.67, with interest thereon at [five] per cent. per annum from the 30th day of July, 19 , which the plaintiff *A.B.* had recovered against the said defendant in the said Court, and indorsed to levy the whole of the said sum of \$437.67 with the interest thereon, besides Sheriff's fees, poundage and other incidental expenses, I did on or about the 6th day of August last, take possession of certain goods and chattels in the dwelling house of the said defendant situate at in the said County of , and the said goods and chattels still remain in my possession as such Sheriff, and are as I am informed and believe, greater in value than the sum of \$400.

(a) The affidavit may be made to the deputy sheriff, see No. 1237.

2. On or about the 17th day of August last there was placed in my hands a writ of *feri facias* which appears to me to have been regularly issued out of the High Court of Justice in the action secondly above mentioned directed to the Sheriff of the County of commanding that he should cause to be levied of the said goods and chattels of the said defendant \$766.22 for debt, and the sum of \$50.06 for costs, which the plaintiff *G.H.* had recovered against the said defendant in said Court, and indorsed to levy the whole of the said sums and interest thereon, besides costs of the said writ, Sheriff's fees, poundage and incidental expenses.

3. On or about the 25th day of August last, there was placed in my hands a writ of *feri facias*, which appears to me to have been regularly issued out of the County Court in the County of in the action thirdly above mentioned, directed to the Sheriff of the County of commanding that he should cause to be levied of the goods and chattels of the said defendant the sum of \$183.80, and the sum of \$18, for costs, which the plaintiff *L.M.* had recovered against the said defendant in the said County Court, and indorsed to levy the whole of the said sums and interest thereon besides costs of the said writ, Sheriff's fees, poundage and other incidental expenses.

4. On or about the 30th day of August last there was placed in my hands a writ of *venditioni exponas*, which appears to me to have been regularly issued out of the High Court of Justice in the action secondly above mentioned, directed to the Sheriff of the County of commanding that he should cause to be sold the goods and chattels of the said defendant seized under the writ of *feri facias* issued in the said action so as to realize the sum of \$766.27 for debt and the sum of \$50 for costs, which the plaintiff *G.H.* had recovered against the said defendant and interest thereon, besides costs of the said writs, Sheriff's fees, poundage and other incidental expenses.

5. On or about the 12th day of August last, I was served with a written notice of claim of which the following is a true copy:

"We hereby on behalf of Mr. *P.Q.*, claim from the estate of *E.F.*, of the sum of \$72.00, being one year's rent due from him for the house and premises lately occupied by him in and forbid you to sell or remove the goods therein until the same is satisfied.

Dated this 12th August, A.D. 19 .

B. & S., Solicitors for *P.Q.*

To

Esquire,

Sheriff, County of

."

6. On or about the 12th day of August last, I was served with a written notice of claim of which the following is a true copy:

"We hereby on behalf of *R.F.* claim the furniture and household effects now in the house and premises lately occupied by *E.F.*, in the Village of _____ and forbid you to sell or otherwise interfere with the same, and will hold you responsible for any damage sustained by [her] from the seizure of the same by you.

Dated this 12th August, A.D. 19 .

B. & S.,
Solicitors for *R.F.*

To _____, Esquire,
Sheriff County of _____."

7. On or about the 4th day of September instant, I was served with a written notice of which the following is a true copy:

"In the High Court of Justice.

Between—*G.H.*, Plaintiff,
and
E.F., Defendant.

We hereby on behalf of *R.E.*, of the Village of _____, in the County of _____, wife of *E.F.*, the above-named defendant, claim the following furniture and household effects now in the house and premises lately occupied by the said defendant in the Village of _____, that is to say:

In the up-stairs bedroom, facing west, (*enumerating the chattels*).

In bedroom up-stairs facing east, &c.

In drawing-room south of hall, &c. All which said goods and chattels, furniture and household effects we hereby forbid you to sell, or otherwise interfere with, and will hold you responsible for any damages sustained by the said *R.F.*, for the seizure or sale of the same by you.

Dated this 3rd day of September, A.D. 19 .

B. & S.,
Solicitors for *R.F.*

To _____, Esq.,
Sheriff County _____."

8. On the day of I caused to be delivered to the solicitors for each of the plaintiffs *A.B.*, *G.H.*, and *L.M.*, a true copy of the notice (a) now shewn to me and marked Exhibit A., to this affidavit, and in response thereto I have received from the notice (b) now shewn to me and marked Exhibit hereto (*as may be the case*).

9. This application for an interpleader order is made to this Honourable Court on my behalf, as such Sheriff, at my own expense, and for my indemnity only, and I do not in any manner collude with the said claimants or any of them.

Sworn, &c.

X.Y.

(*Formal parts: see preceding Form and No. 744.*)

I, , of the , in the County of
[Deputy Sheriff], make oath and say as follows:—

1237

, Another
form. Affidavit
by Sheriff's
officer.

1. I am acting for and on behalf of the Sheriff of the
of , and have knowledge of the execution of
writs of *fieri facias* in the office of the said Sheriff and of
the execution hereinafter referred to.

2. Under and by virtue of a writ of *fieri facias*, which
appears to me to have been regularly issued out of this
Honourable Court in this action directed to the Sheriff of the
of commanding him that he should cause to be
levied of the goods and chattels of , one of the above-
named defendants, \$, together with \$,
which the above-named plaintiffs lately recovered against the
said defendant , in the said Court returnable
immediately after the execution thereof and indorsed to
levy the said respective sums, I did on the day of
instant [*if so* and under the instructions of the plain-
tiff's solicitors herein] cause to be seized and possession taken
by a bailiff of the said Sheriff duly authorized a quantity of
goods and chattels consisting of [office furniture, engine and
boiler, waggons and quantity of ice and plant, &c., used in
meat packing business, and being in the defendant's place
of business on street, in the of],
which appeared to me to be the property of the above-named

(a) Notice according to No. 1233.

(b) Notice according to No. 1234.

defendant, who was at the time of the said seizure in possession and occupation of the said premises, and the said goods and chattels still remain in the custody and possession of the said Sheriff, and are as I am informed and believe greater in value than \$400.

3. I further say that on the day of , instant, I was served with a written notice of which the annexed paper writing is a true copy.

4. I further say that this application is made to this Honourable Court solely on behalf of the said Sheriff, and for his indemnity only, and that I do not nor does the said Sheriff in any way collude with the said claimant or with the said plaintiffs.

Sworn, &c.

1238

Claim annexed.

Toronto, th, 19 .

, Esq., Sheriff, Co.

Dear Sir:—

We beg to notify you that the goods and chattels seized by you under the execution in the above cause belong to Mr. , having been purchased by him at a bailiff's sale under a distress for rent, and we as his solicitors forbid you to remove or in any way dispose of the same.

Yours truly,

A. & B.

Solicitors for .

Interpleader Order, No. 1. (Rules 1103, &c.)

1239

Order barring claimant on non-appearance. (a)

In the High Court of Justice.

The Master in Chambers (*or as may be*).

[*Date.*]

Between , Plaintiff
and
Defendant.

And in the County Court of the County of

Between , Plaintiff,
and
Defendant.

And between Claimant,
and
The said execution credi-
tors and the sheriff of
Respondents.

1. Upon the application of the said Sheriff for an interpleader order, and upon reading the affidavit of filed, and upon hearing the solicitor [*or, counsel*] for , and the said claimant not appearing though duly served with notice as by affidavit of appears.

2. It is ordered that the claimant and all persons claiming under him be and they are hereby forever barred of and from all claim to the goods and chattels seized herein by the said Sheriff as against , that no action be brought against the above-named [Sheriff] for or in respect to the seizure of said goods.

3. And it is further ordered that the costs of this application be

See Con. Rules, 1888, Form 146.

Interpleader Order, No. 2.

In the High Court of Justice.

The Master in Chambers (*or as may be*).

[*Date.*]

Between Plaintiff,
and
Defendant.
and between Claimant.
and
Respondents.

1. Upon the application of , and upon reading the affidavit of filed, and upon hearing the solicitor [*or, counsel*] for .

(b) Con. Rules, 1897, Form 129.

1240

Order substituting claimant for defendant in the action. (b)

2. It is ordered that the above-named claimant be substituted as defendant in this action in lieu of the present defendant.

3. And it is further ordered that the costs of this application be

Dated the day of , 19 .

See Con. Rules, 1888, Form 147.

Interpleader Order, No. 3.

1241

Order on
Sheriff's ap-
plication, for
an issue. (a)

In the High Court of Justice.

The Master in Chambers (*or as may be*).

[*Date.*]

Between Plaintiff,
and
 Defendant.

And between, &c., &c. (*titles of any other actions*)

And between Claimant,
and

The said execution creditor and
the Sheriff of Respondents.

1. Upon the application of the said Sheriff for an interpleader order, and upon reading the affidavit of filed, and upon hearing the solicitor [*or, counsel*] for

2. It is ordered that the said Sheriff proceed to sell the goods seized by him under the writ of *fieri facias* issued herein, and pay the net proceeds of the sale, after deducting the expenses thereof (*or as otherwise ordered*) into Court in this cause, to abide further order herein.

Or, It is ordered that upon payment into Court by the said claimant within from this date of the sum of \$ [*or, of the appraised value of the goods and chattels seized by the said Sheriff herein, together with the expenses of appraisement*], or upon the said claimant within the same time, giving to the execution creditor security to the satisfaction of for the payment of the same amount by the said claimant according to the directions of any order to be made herein, and upon payment by the said claimant

to the above-named sheriff of the possession money from (*the date of his notice of motion or of the order or such date as may be proper*), and upon production to the said Sheriff of the Accountant's certificate that the money has been paid into Court, or the certificate of the said that security has been given as aforesaid, the said Sheriff do withdraw from the possession of the goods and chattels seized by him under the writ of *feri facias* herein.

3. And it is further ordered that unless such payment be made (including the Sheriff's possession money) or such security be given within the time aforesaid or in case before the expiration of the time aforesaid the claimant desires the said goods and chattels to be sold by the said Sheriff the said Sheriff proceed to sell the said goods and chattels, and pay the proceeds of the sale, after deducting the expenses thereof (*or as otherwise ordered*) and the possession money as aforesaid into Court to the credit of this matter, to abide further order herein.

4. And it is further ordered that the parties proceed to the trial of an issue in the High Court of Justice [*or, in the County Court of the County of*] in which the claimant [*or, execution creditor*] shall be plaintiff and the execution creditor [*or, claimant*] shall be defendant, and that the question to be tried shall be whether at the time of [*insert here the delivery of the said writ to the sheriff or, the seizure by the sheriff or, the sale by the Sheriff as the case may require*] the goods and chattels seized [*in case the claimant is plaintiff were the property of the claimant as against the execution creditor*], [*or, in case the execution creditor is plaintiff were exigible under the execution of (the execution creditor) as against the claimant*].

5. And it is further ordered that such issue be prepared and delivered by the plaintiff therein within from this date, and be returned by the defendant therein within days thereafter and be tried at

6. And it is further ordered that the question of costs and all further questions be reserved to be disposed of by the Judge at the trial of the said issue, or if not so disposed of then to be disposed of in Chambers.

7. And it is further ordered that any other execution creditors desiring to take part in the contest of the said issue shall be at liberty to do so upon placing their executions against the goods of the defendant in the hands of the said Sheriff within [ten] days from this date and upon notifying

within the same time the solicitors for (an execution creditor) (who shall have the conduct of the said issue for all execution creditors taking part in it) of their desire to come in and of their agreement to contribute *pro rata* to the expense of the said contest according to the statute in that behalf.

8. And it is further ordered that no action be brought against the said Sheriff for, or in respect to, the seizure of the said goods and chattels or for anything done under this order.

See Con. Rules, 1888, Forms 148, 149, 150.

Interpleader Order, No. 4.

1242
Order for
trial of claims
in a summary
manner. (a)

In the High Court of Justice.

The Master in Chambers (*or as may be*).

[*Date.*]

Between _____, Plaintiff,
and _____
Defendant.

And between _____ Claimant,
and _____
The said _____ execution creditor
and the Sheriff of _____, Respondents.

1. Upon the application of the Sheriff of _____ for an interpleader order and upon hearing read the affidavits of _____ and upon hearing the solicitor [*or, counsel*] for _____, and the claimant and the execution creditor, having requested and consented that the merits of the claim made by the claimant be disposed of and determined in a summary manner.

2. It is ordered that

3. And it is further ordered that the costs of this application be

Con. Rules, 1888, Form 151.

Interpleader Order, No. 5.

In the High Court of Justice.

The Master in Chambers (*or as may be*).[*Date.*]

Between . . . , Plaintiff,
and
Defendant.

And between
and Claimant,
The said . . . execution creditor, and
the Sheriff of . . . Respondents.

1243
Order for sale
of goods and
payment of
claim and ex-
ecution. (b)

1. Upon the application of the Sheriff of . . . for an
interpleader order, and upon reading the affidavit of
filed, and upon hearing the solicitor [*or, counsel*] for

2. It is ordered that the above-named Sheriff proceed to
sell enough of the goods seized under the writ of *fiери facias*
issued in this action to satisfy the expenses of the said sale,
the rent (if any) due, the claim of the claimant, and this
execution.

3. And it is further ordered that out of the proceeds of the
said sale (after deducting the expenses thereof, and rent, if
any), the said Sheriff pay to the claimant the amount of his
said claim, and to the execution creditor the amount of his
execution, and the residue, if any, to the defendant.

4. And it is further ordered that no action be brought
against the said Sheriff, and that the costs of this appli-
cation be

Con. Rules, 1888, Form 152.

(*Formal parts: see Nos. 902 and 1241.*)

and *E.F.*, the claimant named in the affidavit of the said Sheriff, not appearing to maintain or relinquish his claim, although duly notified, as by affidavit of service appears: It is ordered that the said *E.F.*, and all persons claiming from or under him, be and they are hereby for ever barred from prosecuting his claim referred to in the affidavit of the said Sheriff.

1244

Order barring
claim of claim-
ant.

(b) Con. Rules, 1897, Form 132.

2. It is further ordered that the said *E.F.* do forthwith pay to the said Sheriff the possession money incurred by the said Sheriff since the date of the service upon the said Sheriff of the claim of the said *E.F.*, &c. (*the costs are in the discretion of the Court.*)

3. And it is further ordered that no action shall be brought against the said Sheriff in respect to the seizure of the said goods.

(*Formal parts: see Nos. 902 and 1241.*)

1245

Order where execution creditor fails to appear and claimant does appear.

and *A.B.*, the execution creditor named in the affidavit of the said Sheriff, not appearing to maintain or relinquish his claim to the goods and chattels referred to in the affidavit of the said Sheriff, under the execution issued by him in the above cause, although duly notified, as by affidavit of service appears: It is ordered that the said Sheriff do withdraw from the possession of the said goods.

2. It is further ordered that no action be brought against the said Sheriff in respect of the seizure of the said goods or the abandonment thereof under this order.

3. It is further ordered that the said *A.B.* do pay to the said Sheriff the possession money incurred by him in respect to the said goods.

(*Formal parts: see Nos. 902 and 1241.*)

1246

Order where neither execution creditor nor claimant appears.

1. And neither the said [plaintiff] (*the execution creditor*) nor *E.F.*, the claimant named in the affidavit of the said Sheriff, appearing to maintain or relinquish their claims to the goods and chattels referred to in the said affidavit: It is ordered that the said Sheriff do proceed and sell so much of the said goods as may be necessary to pay the expenses incurred by him in respect of the seizure and keeping possession of the said goods, and do thereafter withdraw from the possession of the residue of the said goods and chattels.

2. It is further ordered that no proceedings be taken against the said Sheriff by the said [plaintiff] or the said *E.F.* in respect of the said seizure of the said goods, or for anything done by the said Sheriff by virtue of this order.

1247Bond under
order Form
No. 1241, for
value of
goods seized.

Know-all men by these presents that we, *E.F.* of the
of , in the County of , (*occupation*), and
G.H., of the of , in the County of
(*occupation*), are jointly and severally held and firmly bound
unto *A.B.* in the sum of dollars, to be paid to the
said *A.B.*, his heirs, executors or administrators, for which
payment well and faithfully to be made we bind ourselves
and each of us by himself, our and each of our heirs, execu-
tors and administrators, respectively, firmly, by these presents.

Dated this day of , 19 .

Whereas the said *A.B.* has lately recovered a judgment in
the High Court of Justice against one *C.D.* for \$, and
for having execution of said judgment a writ of *fiery facias*
was issued thereon out of the said Court directed to the
Sheriff of the County of , who under the said writ seized
in execution certain goods and chattels as and for the goods
and chattels of the said *C.D.*, which goods and chattels are
alleged to be the property of the above-named *E.F.*;

And whereas by interpleader order of the Master in
Chambers (*or as the case may be*), dated the day
of , 19 , upon the application of the said Sheriff,
it was amongst other things ordered [*reciting the order, as
for example*: that upon payment of the appraised value of
the said goods and chattels into Court by the said *E.F.* within
days from the date of that order, or upon his giving
within the same time security to the satisfaction of the
Master in Chambers for the payment of the same amount by
him the said *E.F.* according to the directions of any order to
be made herein, and upon payment to the above-named
Sheriff of his possession money, the said Sheriff should with-
draw from the possession of the said goods seized by him and
claimed by the said *E.F.* as aforesaid; and that unless such
payment should be made or such security given within the
time aforesaid, the said Sheriff should proceed to sell the
goods and chattels claimed by the said *E.F.* and pay the pro-
ceeds of such sale, after deducting the expenses and possession
money from the date of the said order, into Court in the said
cause to abide further order therein, and that the parties
should proceed to the trial of an issue in which the said *E.F.*
should be plaintiff and the said *A.B.* should be defendant, and
that the question to be tried should be whether at the time
of the seizure the said goods and chattels seized by the said
Sheriff and claimed by the said *E.F.* or any of them were
the property of the said *E.F.*]

And whereas the said *E.F.* instead of paying the said appraised value into Court has elected to give the security required by the said order, and the above written obligation is entered into for the purpose of such security.

Now the condition of the above written obligation is such that if upon the trial or determination of said issue so directed as aforesaid the verdict or other determination of the said issue shall be in favour of the said *A.B.*, and the said *E.F.* and *G.H.*, or one of them, their or one of their heirs, executors or administrators, shall pay or cause to be paid unto the said *A.B.* the sum of _____ dollars, or a less amount thereof, according to the directions of any order of the Court or a Judge to be made in the matter of the said interpleader; or if upon trial or other determination of the issue the verdict or other determination, as the case may be, shall be in favour of the said *E.F.*, then this obligation to be void and of none effect; otherwise to be and remain in full force and virtue.

Signed, sealed and executed in _____ *E.F.* (Seal)
the presence of _____ *G.H.* (Seal)

(Style of issue as directed by the order.)

1248
Interpleader
issue as to
ownership of
stock.

The plaintiffs affirm and the defendants deny:

1. That the plaintiffs are the holders of _____ shares of stock in the _____ Company, in respect of which _____ have paid \$ _____ into Court.
2. That they are entitled to be registered as the holders of the said shares.
3. And that the said sum of \$ _____ is the property of the plaintiffs as against the defendants.

And the defendants affirm and the plaintiffs deny,

1. That they (the defendants) are the holders, or one of them is the holder, of the said shares.
2. That they are entitled to be registered as the holders, or one of them is entitled to be registered as the holder, of the said shares.
3. And that the said sum of \$ _____ is the property of the defendants, or one of them, as against the plaintiffs.

And it has been ordered by the Master in Chambers that the issue aforesaid shall be tried [by a jury at the County Court of the County of _____.]

Therefore [let a jury come, &c., or, let the question be tried accordingly].

Delivered this day of , 19 .

(*Formal parts: see No. 1248.*)

A.B. affirms and C.D. denies that certain goods and chattels and effects in and about a certain house in the occupation of E.F., situate in , seized in execution by the Sheriff of the County of , under a writ of *fiery facias*, dated the day of , and issued out of the High Court of Justice, directed to the said Sheriff for the having in execution of a judgment of that Court, recovered by the said C.D. in an action at her suit against the said E.F., were, at the time of the said seizure, the property of the said A.B. as against the said C.D.

1249
Interpleader
issue as to
goods seized
by a Sheriff
under a *Fi.Fa.*

And it has been ordered by the Master in Chambers, pursuant to the statute in that behalf, that the truth of the matters aforesaid shall be tried [by a jury of the County of].

Therefore [let a jury come, &c., or, let the question be tried accordingly].

Delivered this day of 19 ,

SECTION V.—MANDAMUS.

(*Formal parts: see No. 403.*)

for an order of mandamus requiring [*stating the mandatory order desired, as for example:* the Judge of the County Court of the County of , to try the above-mentioned action now pending in the Division Court in the said County and to adjudicate upon the same], or for such other order as may seem just.

1250
Notice of motion for a
mandamus.

(*Formal parts: see No. 902.*)

1. It is ordered that the Junior Judge of the County Court of the County of , or other Judge presiding in the Division Court of the County of ,

1251
Order thereon

do try the above-mentioned action now pending in the said Division Court and do adjudicate upon the same.

2. And it is further ordered that the costs of this motion be (*as may have been ordered*).

(*Formal parts: see No. 910.*)

1252

Mandamus
a municipal
corporation
(order of a
Divisional
Court). (a)

In the matter of the Board of Public School Trustees for
School Section 5 of the Township of _____, in
the County of _____

Plaintiffs,

and

The Corporation of the Township of _____

Defendants.

Upon motion made unto this Court on the _____ day
of _____ last on behalf of the plaintiffs by way of appeal
from the order of the Honourable Mr. Justice _____ in
Chambers, made on the _____ day of _____, 19____,
whereby he dismissed with costs the plaintiffs' application for
a mandamus requiring the Reeve and Councillors and the
Municipal Council of the Township of _____ to
pass a by-law under the provisions of [section _____ of The
Act, R. S. O. 1897, chapter _____] authorizing
the issue of debentures to the extent of \$1,000 for the purpose
of a school site and the erection of a school house thereon
in school section No. 5 for the Township of _____, and
to issue debentures which the said by-law shall authorize re-
payable out of the taxable property of the said school section
as may be required to raise the said sum for the said purpose,
upon hearing read the notice of motion and the affidavits
filed on the said motion and upon hearing what was alleged
by counsel for the applicants and for the defendants and the
Reeve and Councillors of the said Township of _____, and
judgment having been reserved until this day.

1. This Court doth order that the said order be and the
same is hereby discharged.

2. And this Court doth further peremptorily order that
the defendants the Corporation of the Township of _____,
and the Municipal Council of the same, do within ten days
from the service hereof, pass a by-law under the provisions
of section _____ of the _____ Act, being chapter _____ of
the Revised Statutes of Ontario, 1897, authorizing the issuing

of debentures to the extent of \$1,000 for the purpose of purchasing a school site and the erection of a school house thereon in Section Number 5 of the Township of _____, and do upon the passing of such by-law forthwith issue debentures which the said by-law shall authorize payable out of the taxable property of such school section as may be required to raise the said sum for such purposes and hand the said debentures over to the said Trustees.

3. And this Court doth further order that the costs of the motion before the Honourable Mr. Justice _____, and of this appeal be paid by the defendants to the plaintiffs forthwith after taxation thereof.

SECTIONS VI.—INJUNCTIONS AND RESTRAINING ORDERS.

The plaintiff claims an injunction order restraining the defendants, their attorneys and agents [*or, servants, workmen and agents; or as may be*] from [*state what; as thus: cutting or removing any timber or other trees standing, lying or being upon the lands in the writ herein mentioned, until, &c.*]

1253

Claim for injunction, in a pleading.

(*Formal parts: see No. 400.*)

on the part of the plaintiff, that the defendant *A.B.*, his [*or, defendants A.B., C.D., &c., their, and each of their*] attorneys, servants and agents [*or, officers, contractors, servants, workmen, and agents—or as may be*], may be restrained, by the injunction of this Honourable Court, from [*state what: for examples, see Nos. 1255 et seq.*] until the trial of this action (*or as may be*), or until further order.

1254

General form of notice of motion for an injunction.

(*Formal parts: see Nos. 400 and 1254.*)

from continuing to erect or raise the walls or building now in course of erection by the defendants to the north of the plaintiff's premises, in the writ of summons [*or, statement of claim*] herein mentioned, to a greater height than the same wall or building now is, until, &c.

1255

Notice of motion to restrain interference with ancient lights.

(Formal parts: see Nos. 400 and 1254.)

1256

Notice of motion to restrain infringement of copyright.

from printing, publishing, selling, or otherwise circulating such portion of the defendant's works, intituled "Mineral Statistics of the United Kingdom of Great Britain and Ireland, for the year 19 ," in the writ of summons [*or*, statement of claim] herein mentioned, as is set forth in the statistics contained in the annual statements or publications published by, or on behalf of, the plaintiff, as in the writ [*or*, statement of claim] mentioned; and from doing any other act or thing in invasion or infringement of the plaintiff's copyright in the said annual statements or publications, or any of them, until, &c.

(Formal parts: see Nos. 400 and 1254.)

1257

Notice of motion to restrain infringement of patent.

from making and selling, or making or selling, any blue or purple violet dye made according to the process discovered in the specification of the letters patent in the writ of summons [*or*, statement of claim] herein mentioned, or according to any process being a colourable imitation thereof; and from in any manner infringing the said letters patent, until, &c.

(Formal parts: see Nos. 400 and 1254.)

1258

Notice of motion to restrain infringement of trade mark.

from affixing, or causing to be affixed, to any casks of wine shipped to their, or any of their order, or used by them, or any of them, the brand or mark of a crown, and the word Seixo, or any other combination of marks or words so contrived as, by colourable imitation or otherwise, to represent the marks or brands used by the plaintiff; and from employing, or permitting to be employed, any marks or brands, or words or other designation, in respect of wines offered for sale by the defendants, or any of them, which shall be so contrived as to represent, or to induce a belief, that such wines are Crown Seixo, or the produce of the quinta de Seixo, in the writ of summons [*or*, statement of claim] herein mentioned; and also from describing, or offering for sale, the wines simply as "Seixo wine;" or otherwise using the word Seixo in respect of such wine; without clearly distinguishing the same from wine produced on the plaintiff's said quinta de Seixo, until, &c.

(*Formal parts: see Nos. 400 and 1254.*)

from felling any timber or other trees standing or growing on the land, in the writ [*or, statement of claim*] herein mentioned; and from cutting the said hedge, or the under-wood thereof; and from committing any other waste, or otherwise interfering with the said meadow, or trees, or hedge, until, &c.

1259

Notice of motion to restrain the felling of timber.

(*Formal parts: see Nos. 400 and 1254.*)

From selling, offering for sale, dealing with, or disposing of any of the goods and chattels mentioned or referred to in the bill of sale [*or, chattel mortgage*], dated the day of , 19 , made between until, &c.

1260

Notice of motion to restrain order sale of goods.

(*Formal parts: see Nos. 400 and 1254.*)

from taking any further proceedings, by distress or otherwise, to recover the rents and profits of the hereditaments and premises in the writ of summons [*or, statement of claim*] mentioned; and from putting in force and execution the distress levied by the defendant upon the goods and chattels of W.P., in the mentioned, until, &c.

1261

Notice of motion to restrain execution for rent.

(*Formal parts: see Nos. 400 and 1254.*)

from causing or permitting any sewage, or water polluted with sewage, to pass through the drains or channels under their control into the river C., in such manner as to render the water of the said river at or near the plaintiff's mill, in the writ of summons [*or, statement of claim*] herein mentioned, unfit for use by the plaintiff, or otherwise injurious to the health of the persons resident at the said mill, until, &c.

1262

Notice of motion to restrain the pollution of a river.

(*Formal parts: see Nos. 400 and 1254.*)

from parting with, delivering over or transferring to the defendant X.Y., or to any one whomsoever, a certain promissory note dated the day of , 19 , for \$, made by the plaintiff, and the bonds in the writ of summons [*or, statement of claim*] herein mentioned, and from paying

1263

Notice of motion to restrain negotiation of a note and bonds

such interest as may in the meantime become payable on such bonds, until, &c.

1264

(*Formal parts: see Nos. 400 and 1254.*)

Notice of motion to restrain the getting in of partnership assets, or intermeddling with the business.

from possessing himself of, getting in, or receiving, and from disposing of, charging, or incumbering, any part of the moneys, credit, property, assets, estate or effects of or belonging to the partnership business in the writ [*or, statement of claim*] herein mentioned; and from incurring any debts or debt in respect of the said business, and from carrying on, or in any manner interfering in, or intermeddling with, the said business, or any of the moneys, property, assets or affairs thereof, without the consent of the plaintiff, until, &c.

1265

(*Formal parts: see Nos. 400 and 1254.*)

Notice of motion to restrain the transfer of a ship's register, and sailing of the ship.

from transferring on the register the ship marked or called No. 4 in the writ [*or, statement of claim*] herein mentioned, to any person or persons; and also to restrain the said defendant, his servants and agents, from removing the said ship out of the jurisdiction of this Court, until, &c.

(*Formal parts: see Nos. 400 and 1254.*)

1266

Notice of motion to restrain marrying ward of Court.

on the part of the plaintiff (*or as may be*), that *A.B.*, of, &c., may be restrained, until further order, from inter-marrying with the plaintiff *C.D.* (*or as may be*), and from having any intercourse or communication with the said *C.D.*

(*Formal parts: see No. 908.*)

1267

Interim injunction order.

and the (*applicant*) by [his] counsel undertaking to abide by any order which this Court may make as to damages in case this Court shall hereafter be of opinion that the [defendant] shall have sustained any by reason of this order which the plaintiff ought to pay. This Court doth order that the [defendant] his servants, workmen and agents [*or, his attorneys, solicitors and agents, or as may be*], be and they are

hereby restrained until next at o'clock in the forenoon
or until such time as any motion to be on that day made to
continue this injunction shall have been heard and disposed
of from (*here state explicitly the act restrained*).

(*Formal parts: see No. 403.*)

on the part of the plaintiffs, that they may be at liberty to
amend the writ of summons [*or, statement of claim*] herein
as they shall be advised (*or as may be*); without prejudice to
the notice of motion for an injunction in this cause.

1268

Notice of motion for leave to amend writ, &c., without prejudice to notice of motion for an injunction.

(*Shortened style of cause.*)

Take notice, that the Hon. the Chancellor of Ontario [*or as may be*] has this day granted an injunction order in this cause, to (*State terms of injunction order*).

1269

Notice of injunction having been ordered.

Dated, &c.

And take also notice, that the said order will be drawn up, and served upon you, as soon as practicable.

Dated, &c.

A.B.,
Plaintiff's solicitor.

To (*party enjoined*).

(*Formal parts: see No. 400.*)

on the part of the defendant A.B., that the injunction granted by the order herein, dated the day of
19 , may be dissolved.

1270

Notice of motion to dissolve an interlocutory injunction.

(*Formal parts: see Nos. 400 and 1254.*)

for an order that the injunction granted by the order herein dated the day of , 19 , restraining the defendant, &c. (*as in the order*) be continued until the trial or other final disposition of this action or until further order.

1271

Notice of motion to continue injunction.

1272

Order continuing injunction.

(*Formal parts: see Nos. 908 and 1267.*)

(*Undertaking as to damages, as in No. 1267, to be inserted in all interlocutory injunction orders.*)

1. This Court doth order that the injunction granted by the order herein dated the _____ day of _____, 19____ [restraining the defendant, &c., *as in the order*], be, and the same is hereby continued until the trial or other final disposition of this action or until further order.

2. And this Court doth further order that the costs of and incidental to the motion for injunction [*if so: to the Local Judge*] and of this motion be reserved to be disposed of at the trial or other final disposition of this action.

(*Formal parts: see No. 908.*)

1273

Order or judgment making injunction perpetual.

1. This Court doth order [and adjudge] that the defendant, &c. (*as in the order*) be and he is hereby perpetually restrained from (*as in the interim order*).

CONSEQUENCES OF THE BREACH OF AN INJUNCTION, OR
RESTRAINING ORDER.

(*Formal parts: see No. 400.*)

1274

Notice of motion for committal for breach of injunction.

on the part of the plaintiff, that the defendant *A.B.* may be committed to the common gaol of the County or united Counties in which he may be found, for breach of the injunction granted by the [order] herein dated the _____ day of _____, 19____, restraining the said defendant from (*state what*) [*if so: and for breach of the undertaking given by the said defendant on, &c.*], and that the said defendant may be ordered to pay the costs of this motion.

(*Formal parts: see No. 744.*)

1275

Affidavit in support of motion to commit.

1. *Prove service of notice of the injunction order: see No. 1269; or if the injunction order has been served, prove service thereof; as thus: I did, on the _____ day of _____,*

19 , serve the above-named defendant *A.B.* with the injunction order, now produced and shewn to me and marked "A," by delivering a true copy of the said order to, and leaving the same with the said defendant *A.B.*, personally, at (*state where*) ; and I, at the same time, produced and shewed to the said defendant *A.B.* the said original order. At the time of the service aforesaid, there was on the said original order, and on the copy thereof so served as aforesaid, an indorsement in the words and figures following; that is to say: (*set out a copy of the indorsement.*)

2. *Prove that defendant has committed a breach.*

3. *Prove service of notice of motion for committal for the breach: see No.*

(Formal parts: see No. 400.)

on the part of the defendant *A.B.*, that [upon his submitting to an order for payment to the plaintiffs their costs of the order dated the day of , 19 , and the costs of his contempt and of this application to be taxed in case the parties differ] : (a) the defendant *A.B.* may be discharged out of the custody of the Sheriff of the County of , as to his said contempt.

SECTION VII.—PROHIBITION.

In the High Court of Justice.

In the matter of a certain action pending in the
Division Court of the County of .

Between, A.B., Plaintiff,
 and
 C.D., Defendant.

(*Formal parts: see No. 403.*)

for an order that the said *A.B.* be prohibited from taking any further proceedings in the above-mentioned action, or for such further or other order as may be just.

(a) Where a party in custody has otherwise purged his contempt, the payment of the costs of the contempt will not be made a condition precedent to his discharge: *Jackson v. Mawby*, L. R. 1 Ch. D. 87, and *H. & L. notes to Con. Rule 855*.

1276

Notice of motion for discharge from custody.

1277

Notice of
motion for
prohibition to
a Division
Court.

And take notice, &c. (*see No. 403.*)

Dated, &c.

Solicitor for the above-named *C.D.*

To the Judge of the said Division Court

and to the above-named *A.B.*

And to Messrs.

his solicitors.

(*Formal parts: see Nos. 744 and 1277.*)

1278

Affidavit for
motion for
prohibition
to a Division
Court.

1. On or about the day of , 19 , I was served with the paper writing now shewn to me and marked Exhibit "A," purporting to be a copy of the summons and particulars of demand issued in the above-mentioned action in the said Division Court.

2. On or about the day of , 19 , I duly filed with the Clerk of the said Division Court a notice disputing the said claim and the jurisdiction of the Court, a true copy of which notice is now shewn to me and marked Exhibit "B."

3. (*Where the objection to the jurisdiction is one which does not appear upon the face of the proceedings, the facts which oust the jurisdiction must be set out.*)

4. On or about the day of , 19 , the said action came on for trial in the said Division Court before his Honour , who notwithstanding the objection made on my behalf to the jurisdiction, tried the case and gave judgment in favour of the plaintiff for \$ and costs.

Prohibition. (Rule 1100.)

In the High Court of Justice.

(*Name of Judge*)

In Chambers

(*Date.*)

In the matter of a certain action pending in the (*name of Court*).

Between—*A.B.*, Plaintiff,
and

C.D., Defendant.

1. Upon the application of and upon reading the affidavits of filed, and upon hearing the solicitor

1279

Prohibition
order. (a)

[*or, counsel*] for and it appearing that the said
has [entered an action against] *C.D.*, in the said Court, and
that the said Court has no jurisdiction in the said [cause]
or to hear and determine the said [action] by reason that
(*state facts shewing want of jurisdiction*).

2. It is ordered that the said be and he is hereby
prohibited from further proceeding in the said [action] in
the said Court.

Con. Rules, 1888, Form 158.

SECTION VIII.—CERTIORARI.

Order of Certiorari (General). (Rule 1101.)

In the High Court of Justice.

(*Name of Judge*)

In Chambers.

(*Date.*)

In the matter of

1. Upon the application of , and upon reading
the affidavit of filed, and upon hearing the solicitor
[*or, counsel*] for

2. It is ordered that do send to the Central Office
of the High Court of Justice at Osgoode Hall, Toronto, (*or*
as may be necessary), forthwith [*or on the* day of
] the , with all things touching the same, as
fully and entirely as they remain in together with this
order, that this Court may further cause to be done there-
upon what it shall see fit to do.

Con. Rules 1888, Form 157.

(*b*) Con. Rules, 1897, Form 137.

1280

Order of
certiorari
(general). (*b*)

*Order of Certiorari to County Court. (Rule 1101.)***1281**

Order of cer-
tiorari to
County Court.
(a)

In the High Court of Justice.

(Name of Judge)

In Chambers.

(Date.)

In the matter of a certain action pending in the County Court of the County of

Between , Plaintiff,
and
Defendant.

1. Upon the application of , and upon reading the affidavit of filed, and upon hearing the solicitor [or counsel] for

2. It is ordered that the Judge of the County Court of the County of do forthwith send to the Central Office of the High Court of Justice at Osgoode Hall, Toronto (*or as may be necessary*), the proceedings and papers in a certain action in the said County Court between plaintiff, and defendant, with all things touching the same, together with this order, that this Court may further cause to be done thereupon what it shall see fit to be done, and no further proceedings are to be taken in said County Court in said action until further order of this Court or a Judge.

3. And it is further ordered (*special terms if any*).

Con. Rules, 1888, Form 156.

1282

Writ of pro-
cedendo.

Edward the Seventh (*as in No. 1064*).

To the Judge of the County Court of the County of ,
(*as may be the case*).

Whereas an order was made by inviting you to send to the Central Office of the High Court of Justice at Osgoode Hall, Toronto (*as may be the case*) the proceedings and papers in a certain action in between plaintiff and defendant, with all things touching the same as fully and entirely as they remained in

(a) Con. Rules, 1897, Form 136.

(*according to the order*) together with that order [*or prohibiting you from further proceeding in a certain action, &c., &c., according to the fact*].

Yet we do for certain reasons us thereunto moving command you that in the said action you do forthwith proceed according to law, the said order to the contrary in any wise notwithstanding, and as if the same had not been made.

Witness, &c. (*see Form 1064.*)

SECTION IX.—RECEIVERS.

And for a receiver of (*as may be necessary*).

1284
Indorsement
of claim on
writ.

That some proper person or persons may be appointed by this Honourable Court, to receive the rents and profits of the real estate of the said testator, and to collect and get in his outstanding personal estate (*or as may be*)—And that the defendant *A.B.* may be restrained, by the order and injunction of this Honourable Court, from in any way interfering with the said real and personal estate, or any part thereof, or with any rents or profits, dividends or interest, arising from any part of the said real and personal estate.

1285

Prayer for a
receiver; and
injunction.

(*Formal parts: see No. 400.*)

on the part of the plaintiff, that a proper person [*or, that L.M., of (residence and addition), on giving security*] may be appointed [*state for what purpose; as thus:*

1286

Notice of motion for a receiver.

to receive the rents and profits of the real and leasehold estates, and to collect and get in the outstanding personal estate of *A.B.*, the testator in the proceedings herein named]:

If of real or leasehold estates, add:

And that the tenants of the said estates may be ordered to attorn, and pay their rents in arrear and growing rents to such receiver:

If of outstanding personal estate, add:

And that the defendant *C.D.*, the executor of the will [or, administrator of the personal estate] of the said *A.B.*, may be ordered to deliver over to such receiver all securities in his hands for such outstanding personal estate, together with all books and papers relating thereto (*or as may be*).

[*Or*, to receive the rents, profits, and moneys receivable in respect of the (defendant's) interest in the following property: (*describing it*), *or* the property in question in this action.]

And that such receiver may be directed from time to time to pass his accounts, and pay his balances into Court, to the credit of this cause.

1287

Notice of motion for a receiver, pending decision as to plaintiff's title.

(*Formal parts: see No. 400.*)

on the part of the plaintiff, that some proper person may be appointed to receive the rents and profits of the real estates of *M.E.*, the intestate in the proceedings herein named: until such time as the plaintiff's title shall be determined; and that the same person may be appointed to receive the rents and profits of the leasehold estates of the said *M.E.*; and to collect and get in her outstanding personal estate, pending the litigation herein.—*Direction to the tenants: see No. 1286.* And that the plaintiff may deliver over to such person so to be appointed all securities in his hands for such outstanding estate, together with all books and papers relating thereto.—*Directions for receiver to pass his accounts, and pay in balances: see No. 1286.*

1288

Order for appointment of a receiver.

(*Formal parts: see No. 908.*)

1. This Court doth order that *A.B.* be and he is hereby appointed [or, that this action (*or matter*) be referred to the Master of the Supreme Court at _____ to appoint a fit and proper person] to act as receiver herein [he first giving security to the satisfaction of (the Master of the Supreme Court at _____ (*or*, the said Master))] to receive (*as may be required, e.g.*, the rents and profits of the real and leasehold estate and collect and get in the outstanding personal estate of *A.B.*, the testator in the proceedings herein named.)

herewith, or for such other order as to this Court may seem meet.

And further take notice that upon and in support of the application will be read the pleadings, proceedings, and judgment herein, and the affidavit of the plaintiff filed.

(Formal parts: see No. 908.)

1291

Order continuing a receiver appointed under an interim order.

Upon motion made into this Court by Mr. of counsel for the plaintiff for an order continuing the appointment of the plaintiff made by the order herein dated the day of 19 as receiver without security of all moneys coming to the defendant from or in respect of shares of stock in the company, and further to appoint the plaintiff receiver of the interest in remainder of the defendant in the late *A.B.*'s estate, in presence of counsel for the defendant; upon opening of the matter and upon hearing read the pleadings and proceedings in this action the judgment herein dated the day of 19 the said order, &c., &c., and upon hearing what was alleged.

1. This Court doth order that the plaintiff be and he hereby is appointed receiver (*as in the interim order without the limitation of time*).

2. And this Court doth further order that the plaintiff be and he is hereby appointed receiver without remuneration and without security to collect, get in, and receive the moneys, property, and effects coming to the defendant from or in respect of the late *A.B.*'s estate, to which under the will of the said *A.B.* the defendant is entitled upon the decease of his mother, to the extent of the plaintiff's judgment, and costs including the costs of the application for the said order of the day of 19 , and of this application, which are to be taxed, and which when taxed the plaintiff shall be at liberty to add to his claim.

(Formal parts: see No. 403.)

1292

Notice of motion for leave for a party to the cause to propose himself as receiver.

on the part of the plaintiff [*or, defendant A.B.*], that he may be at liberty to propose himself as the person to be appointed receiver under the judgment [*or, order*] dated the , 19—; but without giving security: he undertaking to act without salary (*or as may be*).

1293

For the appointment of a receiver under the judgment Underwriting
in this cause dated , on next, at a.m., of a warrant
[or p.m.] and A.B., of the town of [Esquire], is for the ap-
pointment of a
proposed as the said receiver; and C.D., of the same place, receiver.
, and E.F., of the same place. , are pro-
posed as his sureties.

(Short style of cause.)

1294

Take notice, that I will, on the day of , Counter pro-
when the warrant for the appointment of a receiver in this posal for ap-
cause, taken out by , and served upon pointment of
is attendable, propose that instead of the said A. B., proposed receiver.
by as receiver, C.D., of [Esquire], be
appointed; and I propose as his sureties E.F., of
and G.H., of

Dated, &c.

Yours, &c.,

To K. S., Esq.,

I. J.,

Solicitor for

Solicitor for

(Formal parts: see No. 744.)

1295

1. Describe the property, succinctly; as thus: The real and Affidavit of
leasehold estates of the testator A.B., in the judgment [or, the nature and
order] in this cause, dated the , 19 , mentioned, value of the
consist of the short particulars set forth in the first column property over
of the first part of the Schedule hereto. which the re-
ceiver'ship is
to extend.

2. The said estates are in the occupation of the several persons, and at the annual rents, specified in the second and third columns of the said first part.

3. The arrears of rent specified in the fourth column of the said first part are also now due.

4. The outstanding personal estate of the said testator consists of the particulars set forth in the first column of the second part of the said Schedule; and the values there- of are set forth in the second column of the said second part.

5. Shew means of knowledge.

The Schedule above referred to.

First Part.

Particulars of Estate.	Tenant's name.	Annual rent.	Arrears due.
The Homestead Farm, at Uxbridge, Ontario. &c.	John Jones, &c.	\$ c. 300-00 &c.	\$ c. 75-00 &c.

Second Part.

Particulars of Outstanding estate.	Value.
Book debts &c.	\$ cts. 350-00 &c.

(*Formal parts: see No. 744.*)

1296

Affidavit of
witness of pro-
posed receiver.

1. I have for years last past known and been well acquainted with *L.M.*, of (*residence and addition*), the person proposed to be appointed in this cause the receiver [of the rents and profits of the real estate, and to get in the outstanding personal estate, of the testator *A.B.*, or as may be].

2. The said *L.M.* is (*state the trade, business, or profession, if any, of the proposed receiver; and where carried on, and for how long, to the deponent's knowledge.*)

3. The said *L.M.* is a person of respectability and integrity, and of good credit; and in my judgment he is a fit and proper person to be appointed receiver of the said rents and profits and outstanding estate (*or as may be*).

1297

Bond of a re-
ceiver.

Know all men by these presents that we, *L.M.*, of ,
C.D., of , and *E.F.*, of , are jointly held and
firmly bound unto the Accountant of the Supreme Court of
Judicature for Ontario in the penal sum of \$ for which

payment well and truly to be made we bind ourselves, and each of us by himself, our and each of our heirs, executors, and administrators respectively, firmly by these presents.

Dated this day of 19 .

Whereas by an order of the High Court of Justice for Ontario made in an action wherein are plaintiffs and defendants, and bearing date the day of , it was ordered that it should be referred to the Master of the Supreme Court of Judicature at to appoint a proper person to receive [*or*, upon the above bounden *L.M.* first giving security to the satisfaction of the said Master, he should be appointed receiver of] [the rents and profits of the real estate, and to collect and get in the outstanding personal estate of the late *X.Y.* in the said order named.] And whereas the said Master hath appointed and approved of the above bounden *L.M.* and *C.D.* and *E.F.* as sureties for the said *L.M.*, and has also approved of these presents as a proper security to be entered into by the said *L.M.* and *C.D.* and *E.F.*, pursuant to the said order and the Consolidated Rules of the Supreme Court of Judicature in that behalf, and in testimony of such approbation, has signed an allowance in the margin hereof.

Now the condition of the above written obligation is such, that if the said *L.M.* do and shall duly account for all and every the sum and sums of money which he shall so receive on account of the [rents and profits of the real estates, and in respect of the personal estate of the said *X.Y.*], and do and shall duly pay the balances which shall from time to time be certified to be due from him at such periods as may be directed, then the above obligation shall be void and of none effect, otherwise the same is to be and remain in full force and virtue.

Signed, sealed, and delivered	<i>L.M.</i> [L. S.]
in presence of	<i>C.D.</i> [L. S.]
	<i>E.F.</i> [L. S.]

(*An affidavit of execution should be annexed: see Form No. 1187.*)

(*Title of the cause as in No. 744.*)

We, *C.D.*, of (*residence and addition*), and *E.F.*, of &c., **1298**
Affidavit of
justification
sureties.
the proposed sureties for *L.M.*, of (*residence and addition*),
the person proposed to be appointed receiver in this cause,
severally make oath and say as follows:

1. I, the said *C.D.*, for myself say, that I am a resident inhabitant of the Province of Ontario, and am a freeholder [*or, householder*] well and truly worth the sum of \$ (insert the amount for which he is to be bound), after payment of all my just debts and liabilities.

2. And I the said *E.F.*, for myself say, that I am (&c.: as above, to the end.)

(Shortened style of cause.)

1299

Appointment
of receiver. (a)

I hereby appoint *L.M.*, of _____, Esquire (*or as may be*), receiver in this action. [*If without compensation, the following may be added: but no compensation is to be allowed to him for his services as such receiver.*]

Dated at _____, this _____ day of _____
(Signature of Master.)

(Shortened style of cause.)

1300

Notice to
tenant to
attorn to re-
ceiver.

I, *L.M.*, of (*residence and addition*), the receiver appointed in this cause of the rents and profits of the real estate of *A.B.*, the testator in the proceedings in this cause named (*or as may be*), hereby give you notice and require you to attorn and become tenant for [*describe the property; as thus: the messuage or tenement, garden and outbuildings, with the appurtenances, situate at A., in the county of B.*], now occupied by you, and for such other part or parts of the said real estate as is or are in your occupation; and to pay to me your rent in arrear, and growing rent, for the said premises. Dated this _____ day of _____, 19 _____.

L. M.

To *W.P.*, of (*residence and addition*.)

(Shortened style of cause.)

1301

Attornment
thereon.

I, *W.P.*, of (*residence and addition*), attorn and become tenant to *L.M.*, the receiver appointed in this cause, for

(a) See also Form No. 996 which is Form 87 in the Appendix to the Con. Rules, 1897.

(describe the property: see No. 1300), as the same are now in my occupation: to hold the same at and under the same rent, and subject to the same covenants and conditions as I now hold the same. And I have this day paid to the said *L.M.* the sum of (twenty cents) for and on account, and in part payment of the said rent. Dated this day of , 19 .

Witness:

W.P.

V.N., of (residence and addition.)

(Formal parts: see No. 403.)

on the part of the plaintiff (or as may be), that *W.P.*, of (residence and addition), may be ordered, within seven days after service, to attorn and become tenant to *L.M.*, the receiver appointed in this cause, for, or in respect of, the (describe the property: see No. 1300), now occupied by the said *W.P.*; and pay his rent in arrear, and growing rent for the same, to the said *L.M.*

1302

Notice of motion for tenant to attorn and pay rent

(Formal parts: see No. 403.)

Proceed as in No. 1302, to the said *W.P.*; and continue thus: And that an annual value, by way of rent, may be set upon the said premises during the time the said *W.P.* has been in the possession or occupation thereof and that the said *W.P.* may be charged therewith.

1303

Notice of motion for tenant to attorn, and for occupation rent to be paid.

Powers, Duties, and Liabilities of Receivers.

(Formal parts: see No. 403.)

on the part of the plaintiff (or as may be), that *L.M.*, the receiver appointed in this cause, may be at liberty to distrain upon the goods and chattels of *E.F.*, of (residence and addition), for the sum of \$, being arrears of rent due from him on the , 19 , in respect of the (describe the property: see No. 1300). If so: and that the said distress may be made in the name of the defendant *C.D.*; and that he may be indemnified in respect thereof out of the estate of the testator *A.B.* or as may be).

1304

Notice of motion for leave for receiver to distrain.

(*Formal parts: see No. 403.*)

1305

Notice of motion for leave for receiver to bring an action for arrears of rent.

on the part of the plaintiff (*or as may be*), that *L.M.*, the receiver appointed in this cause, may be at liberty to bring and prosecute an action in [the County Court of the County of], in the name of the defendant *W.J.*, as executor of the will of *G.S.*, the testator in this cause, to obtain payment of \$, due for rent from the said *W.J.* to the said testator's estate; and that the defendant *W.J.* may be indemnified therein out of the said estate.

1306

Notice of motion for payment to receiver of moneys received by defendant.

(*Formal parts: see No. 403.*)

on the part of the plaintiff, that the defendant *E.A.* may be ordered, on or before the , 19 , or within four days after service of the order to be made on this application, to pay to *L.M.*, the receiver appointed in this cause, all moneys received by the said defendant since the appointment of such receiver: the amount to be verified by affidavit.

1307

Notice of motion for leave for receiver to cut and sell timber.

(*Formal parts: see No. 403.*)

on the part of the plaintiff, that *L.M.*, the receiver appointed in this cause, may be at liberty to cut and fell the trees specified in the affidavit of *C.D.*, filed the , 19 , and the exhibit marked A. thereto; and to sell the same by public auction, according to the usual particulars and conditions of sale in like cases; and that the said receiver may receive the purchase moneys for the said trees, and bring the amount thereof into his account as such receiver.

1308

Other notices of motion relating to the management of property comprised in a receivership.

See the following Forms, which can be readily adapted to a receivership:—

Action: For leave to bring, 1384; or defend, 1385-6; or compromise, 1389.

Business: For leave to carry on, 1387.

Claim: For leave to compromise, 1389.

Debts: For leave to pay, 1388.

Lease: For leave to obtain renewal of, 1391.

To approve agreement to grant a lease, 1392.

Repairs, or Drainage Works: For leave to execute, 1390.

*Receivers' Accounts.**(Formal parts: see 744.)*

I, *L.M.*, of (*residence and addition*), the receiver appointed in this cause, make oath and say as follows:

1309
Affidavit by
receiver,
verifying his
account.

1. The account contained from page to page , both inclusive, in each of the two several papers marked with the several letters A. and B., produced and shewn to me at the time of swearing this my affidavit, and purporting to be my account of the rents and profits of the real estate, and of the outstanding personal estate of *A.B.*, the testator [*or*, intestate] in this cause, from the day of , 19 , to the day of , 19 , both inclusive, doth contain a true account of all and every sum and sums of money received by me, or by any other person or persons by my order, or, to my knowledge or belief, for my use, on account or in respect of the said rents and profits accrued due, on or before the day of , 19 , or on account or in respect of the said personal estate: [other than and except what is included as received in my former account [*or*, accounts] sworn to by me].

2. The several sums of money mentioned in the said account hereby verified to have been paid and allowed, have been actually and truly so paid and allowed for the several purposes in the said account mentioned.

3. The said account is just and true in all and every the items and particulars therein contained, according to the best of my knowledge and belief.

(Short style of cause.)

The first (*or as may be*) account of *L.M.*, the receiver appointed in this cause by [*or*, pursuant to] an order made in this cause, dated the day of , 19 , to receive the rents and profits of the real estate, and to collect and get in the outstanding personal estate of *A.B.*, the testator [*or*, intestate] in this cause named: from the day of , to the day of , 19 .

1310
Account of re-
ceiver; refer-
red to in No.
1309.

EXTRAORDINARY REMEDIES.

No. of item.	Date when received.	Tenants' names.	Description of premises.	Annual rent.	Arrears due at—, 19—.	Amount due at—, 19—.	Amount received.	Arrears remaining due.	Observations.
1		John Jones...	Homestead Farm in the County of Oxford	\$ c.	\$ c.	\$ c.	\$ c.	\$ c.	
		Thomas Jones	House at Village of Norton						

PAYMENTS AND ALLOWANCES ON ACCOUNT OF REAL ESTATE.

No. of item.	Date of payment or allowance.	Names of persons to whom paid or allowed.	For what purposes paid or allowed.	Amount.	Observations.
1		Sun Fire Office.....	One year's insurance of —, due —,	\$ c.	
2		Thomas Carpenter...	Bill for repairs at house let to Thomas Jones...		
3		James Francis.....	Allowance for a half-year's taxes, due —		
			Total payments.....		

RECEIPTS ON ACCOUNT OF PERSONAL ESTATE.

No. of item.	Date when received.	Names of persons from whom received.	On what account received.	Amount received.
				\$ c.

PAYMENTS AND ALLOWANCES ON ACCOUNT OF PERSONAL ESTATE.

No. of item.	Date when paid or allowed.	Names of persons to whom paid or allowed.	For what purpose paid or allowed.	Amount paid or allowed.
				\$ c.

SUMMARY.

Amount of balance due from receiver on account of real estate on last account.....	\$ c.	\$ c.
Amount of receipts on the above account of real estate.....		
Balance of last account paid into Court.....	\$ c.	
Amount of payments and allowances on the above account of real estate		
Amount of receiver's costs of passing this account as to real estate		
Balance due from the receiver on account of real estate	\$	
Amount of balance due from receiver on last account of personal estate		
Amount of receipts on the above account of personal estate		
Balance of last account paid into Court.....	\$ c.	
Amount of payments and allowances on the above account of personal estate...		
Amount of receiver's costs of passing this account as to personal estate.....		
Balance due from the receiver on account of personal estate.	\$	

(*Formal parts: see No. 403.*)

on the part of the plaintiff (*or as may be*), that *L.M.*, the receiver appointed in this cause, may be ordered, on or before the day of , 19 , or within four days after service, of the order to be made on this application, to pay into Court, to the credit of this cause (*or as may be*), the sum of \$, by the Master's report, dated the day of , 19 , certified to be due from him on passing his account therein mentioned; and that the said *L.M.* may be ordered to pay the costs of this application.

1311

Notice of motion to compel receiver to pay balance into Court.

(*Formal parts: see No. 403.*)

on the part of the plaintiff (*or as may be*), that he may be at liberty [*or, that the defendant C.D., the executor of the will of A.B., the testator in this cause—or as may be—may be ordered*] to put in suit the recognizance, dated the day of , 19 , entered into by *L.M.*, the [late] receiver in this cause, together with *C.D.* and *E.F.*, his sureties.

1312

Notice of motion for leave to put recognizance in suit.

Discharge of Receiver.

(*Formal parts: see No. 1324.*)

The humble petition of the plaintiff (*or as may be*),
Sheweth as follows:

1313

Petition to discharge receiver.

1. *Recite judgment or order appointing receiver, subject to his giving security, and the Master's report of such security having been given—or, the judgment or order directing a proper person to be appointed receiver, and the subsequent order appointing such person.*

2. *State to what time the receiver has passed his accounts, and accounted for his balances; as thus: Pursuant to the said judgment, &c., the said L.M., has passed his accounts as such receiver to the day of , 19 ; and has paid, in the manner thereby directed, the balances from time to time certified to be due from him on his said accounts.*

3. *State why a receiver has ceased to be necessary; as thus: By an order dated the day of , 19 , C.D. and E.F. have been appointed trustees of the real estate of the testator*

G.H., and such estate has been conveyed to and vested in them, upon the trusts of his will. By reason thereof, it is expedient that the appointment of a receiver of the said estate should be discontinued.

4. *If so*—That on the day of , the said *L.M.* brought in and passed before the Master [at] his final account, and he has paid into Court to the credit of this cause the balance found by the said Master to be in his hands upon the footing of the said final account.

Your petitioner therefore prays, that the said *L.M.* may be discharged from being receiver as aforesaid; [and that he may be ordered to pass his final account as such receiver, and pay the balance certified to be due from him thereon into Court, to the credit of this cause, *or as may be*] (*a*) and that [thereupon] the security given by the said *L.M.*, together with *C.D.* and *E.F.* as his sureties, may be delivered up to be cancelled.—*Add, if desired, a clause as to the costs; as thus:* And that the costs of all proper parties of this application, and consequent thereon, may be taxed as between solicitor and client; [and that the said *L.M.* may be directed to pay such costs; and be allowed the same on passing his said account.] And that the same be ordered to be paid out of the fund in Court to the credit of this cause.

1314

Notice of motion to discharge receiver.

(*Formal parts: see Nos. 400 and 403.*)

on the part of the plaintiff (*or as may be*), that *L.M.*, the receiver appointed in this cause, may be discharged; and that he may be ordered (*continue as in prayer No. 1313, to said account.*)

Liabilities and Rights of Sureties.

(*Formal parts: see No. 403.*)

1315

Notice of motion for receiver to give a new security on death or bankruptcy of a surety.

on the part of the plaintiff (*or as may be*), that *L.M.*, the receiver appointed in this cause, may be ordered to give a new security duly to account for what he shall receive as such

(*a*). If paragraph 4 be omitted in the petition, the words between [] may be inserted.

receiver: *C.D.*, one of his sureties hereinafter named, having died [*or*, having made an assignment for the benefit of his creditors]; and that such security may be approved by the Judge. And that the said *L.M.* may be ordered to pass his accounts up to the date of such new security; and pay the balance certified to be due from him thereon into Court, to the credit of this cause (*or as may be*). And that upon such new security being given, and payment in manner aforesaid of the said balance, the recognizance dated the _____, 19____, entered into by the said *L.M.*, together with the said *C.D.* and *E.F.*, as his sureties, may be vacated.

(*Formal parts: see No. 403.*)

on the part of *C.D.*, one of the sureties in this cause for *L.M.*, the receiver appointed therein, that the said *C.D.* may be at liberty to attend, at his own expense, the passing of the accounts of the said *L.M.*, as such receiver (*or as may be*). **1316**
Notice of motion by surety for leave to attend the passing of receiver's account.

See No. 1041.

1317
Master's report on passing receiver's accounts.

SECTION X.—CHARGING ORDERS.

(*Formal parts: see No. 403.*)

For an order that the said _____, the solicitor for the plaintiff [*or defendant*] in this action shall have a charge upon (*specify exactly the nature and amount of the property, so as to identify it*) for his costs, charges, and expenses of and in reference to this action. **1318**
Notice of motion for charging order for solicitor's costs.

(*Formal parts: see No. 744.*)

1. I was employed by the above named plaintiff to commence and prosecute this action (*or as the case may be*). **1319**
Affidavit in support.

2. (*State the result of the action and shew that property has been recovered or preserved, specifying as far as possible its exact nature and amount.*)

3. I submit that I am entitled to a charge upon the said property.

1320

Order thereon.

(*Formal parts: see No. 902.*)

It is hereby declared that the said _____ is entitled to a charge upon (*describe the property*) for his costs, charges, and expenses of and in relation to this action and it is so ordered accordingly.

1321Charging
order on stock,
&c.

(*Formal parts: see No. 908.*)

2. This Court doth order that the (*name of company or bank to be restrained*) and their servants, clerks, and agents, be and they are hereby restrained from suffering or permitting any transfer to be made on the books of the said (*company or bank as may be*) of the _____ shares of the capital stock of the said (*company or bank as may be*) standing in the name of *A.B.* (*the judgment debtor*). [*or, if so, in the name of C.D. in trust for A.B.*] until the day of _____ now next, at _____ o'clock in the forenoon, or until such time as the application on that day to be made to continue this injunction shall have been disposed of.

3. And this Court doth further order that the said *A.B.*, his servants, attorneys, and agents, be and they are hereby restrained from transferring, selling, charging, or incumbering the said shares of the capital stock in the said (*bank or company*) until the said _____ day of _____ now next (*continue as in the preceding paragraph*).

4. And this Court doth further order that the said *A.B.* do on the said _____ day of _____ now next, at _____ o'clock in the forenoon, or so soon thereafter as the matter can be heard, shew unto this Court, at its weekly sittings for the hearing of motions [at Osgoode Hall in the City of Toronto, *or as may be*] why the said injunction should not be made perpetual, and why the said shares should not be charged with the payment of the sum of \$ _____ due by the said *A.B.* to (*the applicant*), and why the said *A.B.* should not pay the costs of this application or why such other order should not be made in the premises as to the said Court may seem just.

SECTION XI.—ENFORCING COMPROMISE OF ACTION.

(*Formal parts: see No. 403.*)

On behalf of the that all further proceedings in
this action may be stayed in accordance with the terms of
an agreement for the compromise of this action made between
the plaintiff of the one part and the defendant of the other
part, dated the day of , 19 , and that
the plaintiff be ordered to pay to the defendant his costs of
this application.

1322

Notice of mo-
tion to enforce
an agreement
for the com-
promise of an
action.

SECTION XII.—INTERIM PRESERVATION OF PROPERTY.

(*Formal parts: see No. 403.*)

On behalf of the that pending this action the
(*subject matter of litigation*) in the pleadings men-
tioned may be deposited in Court to abide further order.

1323

Notice of mo-
tion.

[*Or*, that the horse mentioned in the statement of claim
may be sold, and that the proceeds of such sale, after deduct-
ing the expenses thereof, may be paid into Court to the
credit of this action, subject to the further order of the
Court.]

Or, that the , his solicitors and agents, and
also the two persons to be named by the [plaintiff] may be at
liberty [and that the defendant may be ordered to permit the
plaintiff, his solicitors and agents and the two persons to be
named by him as aforesaid] at all reasonable times, upon
giving the 's solicitor hours previous
notice in writing to inspect the , the subject matter
of this action, and to take samples thereof.

CHAPTER XIX.

PROCEEDINGS NOT COMMENCED BY WRIT.

SECTION I.—PETITIONS.

1324

Formal parts
of a petition.

In the High Court of Justice.

(Style of cause or matter, as in No. 403.)

To the Honourable the Judges of the High Court of Justice.

The humble petition of the plaintiff *(or as may be (a))*
Sheweth as follows:

1. By, &c. { *State the material facts on which the appli-*
 cation is founded; and divide the statements
2. On, &c. { *into paragraphs, numbered consecutively.*

The petitioner therefore prays that
(State the precise object of the petition).

And the petitioner will ever pray, &c.

1325

Notice to be
indorsed on a
petition. (b)

Notice of Presentation to be indorsed on a Petition. (Rule 937.)

Take notice that the within petition will be presented to the Court [*or the presiding Judge in Chambers, or as may be*] at [Osgoode Hall, in the City of Toronto, *or as may be*], on the day of , 19 , at o'clock in the forenoon, or so soon thereafter as counsel [*or the matter*] can be heard. If you do not attend on such presentation, such order may be made in your absence upon the petitioner's own shewing as may seem just, and you will not be entitled to receive notice of any future proceedings on the petition.

And take notice that in support of the petition will be read the affidavits of [*or depositions, of* taken
or as may be].

(a) The petitioner should be described in the manner explained in note (a) on p. 278.

(b) Con. Rules, 1897, Form 70.

Dated this day of 19 .
 To *C.D.*, Respondent, Petitioner,
 or Messrs. *X.Y.*, or Petitioner's Solicitor.
 Solicitors for the Respondent.

SECTION II.—ADMINISTRATION.

In the High Court of Justice.

1326

Style of an
 administration
 matter.

In the matter of the estate of *E.F.*, late of the Town-
 ship of in the County of , deceased.

Between *A.B.*,

Plaintiff,

and

C.D. (executor of the will of the
 above named *E.F.*, or administrator of
 the estate and effects of the above named
E.F.) [and *X.Y.* (c).]

*Notice of application for Administration Judgment or for an
 Order respecting the guardianship of an infant.* (Rule 945.)

1327

Notice of mo-
 tion for an ad-
 ministration
 judgment or
 an order re-
 specting
 guardianship
 of an infant.

In the High Court of Justice.

(c) Between *A.B.*, Plaintiff,
 and
 C.D., Defendant.

Take notice that a motion will be made to the presiding
 Judge in Chambers at Osgoode Hall, Toronto [or to the
 Master in Chambers, or to the Master of the Supreme Court
 at the city or town of at his office in the city [or town]
 of, &c. (*as the case may require*)], on the day

(c) In case the plaintiff is not beneficially interested in the real estate of deceased, some person so interested in the real estate must be joined as a defendant: see Rules 951 and 203.

(d) Con. Rules, 1897, Form 59.

(e) The style of the matter given in this Form seems to be inaccurate. Where the application is for administration of an estate, the notice should be entitled "In the matter of the estate of, &c.," and where the application is for the appointment of a guardian, unless there is a cause in Court in which the application is made, the notice should be entitled "In the matter of" the infant: see Forms Nos. 1326 and 1358.

of _____ at the hour of _____ o'clock in the forenoon,
 or if opposed, then to a Judge in Chambers so soon there-
 after as a Judge shall be sitting in Chambers], for judgment
 for the administration of the estate, real and personal, of
 _____ by the Court [or for an order appointing
 guardian of _____ an infant]; and upon such application
 will be read the affidavits of _____ this day filed.

Dated, &c.

X.Y., Solicitor for

To Mr. C.D.

Con. Rules, 1888, Form 12.

1328

Affidavit in
 support of an
 application by
 a creditor.

(Formal parts: see No. 744.)

1. State the amount, and nature of the debt; and any exist-
 ing security for its payment, or negative the existence of any
 such security.

2. Prove that the defendants are the proper persons to
 be sued; as thus: The said John Thomas died on or about the
 day of _____, 19____; and probate of his
 will has [or, letters of administration of his personal (and
 real) estate have] been granted to the defendant William
 Jackson (or as may be), and he is now the sole personal [and
 real] representative of the said John Thomas, deceased.

If administration of realty is sought, some ground should
 be laid for it, thus:

3. I have applied to the said William Jackson for pay-
 ment of my said debt, and I have been informed by the said
 William Jackson that the personal estate of the said John
 Thomas, deceased, come to his hands, is insufficient for the
 payment of the debts of the said deceased, and he has refused,
 and still refuses, to pay my said debt.

5. The said John Thomas died seised of or otherwise
 well entitled to the following lands (*describe them shortly*),
 and I believe that it is necessary that the same, or some part
 thereof, should be sold, for the payment of the debts of the
 said deceased.

(Formal parts: see No. 744.)

1329

Affidavit in
 support of an
 application by
 a specific,
 pecuniary, or
 residuary
 legatee. (a)

1. State, succinctly, the nature of the bequest; as thus: The
 above named John Thomas, by his will dated the
 day of _____, 19____, bequeathed to me all his household

(a) This application cannot be made until a year has elapsed
 from the death of the testator.

furniture and effects [*or*, a legacy of \$400, payable three months after his death—*or*, one-fifth of the residue of his personal estate and effects—*or*, an annuity of \$80, during my life, *or as may be*.]

2. *Prove that the defendant is the proper person to be sued; as thus:* The said John Thomas died on or about the day of , 19 , and probate of his will has been granted to the defendant William Jackson (*or as may be*).

3. *Shew that the bequest has not been satisfied; as thus:* The household furniture and effects bequeathed to me as aforesaid have not yet been delivered to me [*or*, The legacy of \$400 bequeathed to me as aforesaid remains due to me from the said testator's estate—*or*, The share of residue bequeathed to me as aforesaid has not been accounted for, or paid to me—*or*, I am now entitled to the said annuity of \$80 bequeathed to me as aforesaid; but no provision to secure the due payment thereof has been made—*or as may be*.]

(*Formal parts: see No. 744.*)

1330

State the death of the person whose estate is to be administered, and shew that the applicant is one of the next of kin; as thus: 1. The above named John Thomas died on or about the day of , 19 , a bachelor, and intestate; and without leaving any father, mother, sister, or brother him surviving.

The like, by a next of kin. (b)

2. The said John Thomas was the son of Charles Thomas, late of, &c. The said Charles Thomas had two children only; that is to say: (1) the said intestate John Thomas; and (2) my father, Francis Thomas.

3. The said Francis Thomas died on or about the day of , 19 . The said Francis Thomas had three children only; that is to say: (1) my brother, the defendant Edward Thomas; (2) my sister Mary, now the wife of William Hughes, of, &c; and (3) me the deponent.

4. As a child of the intestate's said brother Francis Thomas, I claim to be one of the next of kin of the said intestate John Thomas; and as such, to be entitled to a dis-

(b) This application cannot be made until a year has elapsed from the death of the testator.

tributive share of his estate. Such share has not been paid, or accounted for to me.

Shew that the defendant is the proper person to be sued; as thus: 5. Letters of administration of the personal estate of the said John Thomas have been granted to the defendant Edward Thomas (*or as may be*).

(*Formal parts: see No. 744.*)

1331

Affidavit in support of an application by a person interested in real estate.

State, succinctly, the nature of the applicant's interest under the will, and the persons to be sued; as thus: 1. The above named John Thomas, by his will dated the day of , 19 , devised all his real estate to the defendant Edward Styles, upon trust to sell and convert the same into money, and invest such money as therein mentioned; and to pay the income to accrue from such investment unto the testator's wife, Louisa Thomas, for her life; and after her death, to raise the sum of \$1,000 out of the said trust estate, and pay the same to me, on my attainment of the age of twenty-one years; and the said testator appointed the defendant William Jackson executor of his will.

2. The said testator died on the day of , 19 ; and probate of his will was on the day of , 19 , granted to the defendant William Jackson.

3. No caution has been registered by the said William Jackson, and the said real estate has become vested in the said Edward Styles as trustee as aforesaid.

4. The defendant Edward Styles accepted the trust reposed in him by the said will; and he converted the testator's real estate into money, and made certain investments out of the proceeds thereof.

5. The testator's widow, the said Louisa Thomas, died on the day of , 19 ; and I attained my age of twenty-one years on the day of , 19 .

6. I am now entitled to receive the said sum of \$1,000; but the defendant Edward Styles refuses or neglects to pay the same to me.

See Nos. 838 and 839.

(Formal parts: see No. 838.)

Upon the application of counsel for the above named plaintiff in presence of counsel for the defendant for an order for the administration of the personal estate and effects of the said deceased, and upon hearing read the affidavits of the plaintiff and defendant filed, and upon hearing what was alleged by counsel aforesaid, and an account having been taken by this Court of the personal estate of the said intestate come to the hands of the said defendant, the administratrix of the said estate, and wherewith she is chargeable;

1. This Court doth find that she has received and is chargeable with the sum of \$, and that she has paid or is entitled to be allowed thereout for debts and funeral expenses of the said intestate paid by her, and also the sum allowed to her as compensation for her services, the sum of \$, leaving a balance in her hands, after deducting the costs of both parties hereinafter mentioned, of \$.

2. And it appearing that there are no debts of the said intestate remaining unpaid, and that there is no personal estate of the said intestate outstanding or undisposed of, and it further appearing that the plaintiff and the defendant are respectively entitled to one half of the residuary personal estate of the said intestate in the hands of the said defendant after payment of the costs of this matter; and the costs of the plaintiff having been taxed and allowed to him at \$, and the costs of the administratrix having been taxed and allowed to her at \$, it is ordered that the defendant do forthwith pay to the plaintiff his said costs, together with the sum of \$, his share of the said residuary personal estate remaining in her hands as aforesaid.

(Title of the administration action, or matter.)

Take notice, that by a judgment [*or, an order*], dated the day , 19 , in this matter which has been instituted for the administration of the estate of A.B., late of, &c., deceased, it was ordered that the said estate should be administered, and for that purpose the matter was

1332
Judgment for
administra-
tion.

1333
Administra-
tion judgment
accounts taken
by the judg-
ment.

1334
Notice of ad-
ministration
judgment to a
creditor pro-
ceeding with
an action.

*(Title of the creditor's action.)**(Formal parts: see No. 744.)*

We, *G.H.*, of (*place of business*), gentleman, the solicitor for the applicant.—*If so*: and also his solicitor in this—and the above named defendant *E.F.*, of (*residence and addition*), severally make oath and say:

1337

Affidavit by the personal representative and his solicitor, in support of motion to stay an action by a creditor.

And first, I, the said *G.H.*, for myself, says as follows:

1. On the day of , *C.D.* brought this action (*or as may be*), against the said defendant *E.F.*, as the executor [*or, administrator*] of *A.B.*, the testator [*or, intestate*], to recover the sum of \$, alleged to be due to the said *C.D.* from the estate of the said *A.B.* (*or as may be*).

2. *State, concisely, the material proceedings in the action; as thus*: The said *E.F.* duly appeared to the said action; and issue has been joined therein, and notice of trial given for the next assizes to be holden at , in the County of .

3. On the day of , 19 , proceedings were instituted in this Court [*or the High Court of Justice*], by a creditor of the said *A.B.* (*or as may be*) for the administration of the estate of the said *A.B.*, and by a judgment dated the day of , 19 , made in said proceedings, the usual accounts have been directed to be taken of the estate of the said *A.B.* including an account of his debts.

4. *Prove service on the plaintiff of the judgment (see No. 766).*

And I, the said *E.F.*, for myself, say as follows:

5. The only assets of the said *A.B.* now in my hands consist of [*state what; as*: the sum of \$ cash] and such assets are insufficient, in a due course of administration, to pay the claim of the said *A.B.* in the said action, and his costs thereof (*or as may be*).

*(Style of cause: see No. 1326.)**(Formal parts: see No. 902.)***1338**

Upon the application of , upon hearing the solicitors for the plaintiff and the defendant and upon reading the judgment, reports herein dated respectively

Order for distribution in an administration matter.

the day of , 19 , and the day of , 19 ,
and the certificate of the Accountant.

1. It is ordered that the moneys in Court to the credit of this be forthwith paid out and distributed as found by the said Master's final report.

SECTION III.—PARTITION.

1339

Allegations in In the High Court of Justice:
a claim or
affidavit by
tenants in
common
against co-ten-
ants for sale or
partition.

Between—*H.E.M., O.W.K., C.E.K., and E.
J.L.* Plaintiffs,
and
*E.P., E.K., R.J.K., and I.L.P.,
and M.P.,* two infants under the
age of twenty-one years,
Defendants.

(*Formal parts: see No. 744.*)

1. *W.K.*, in his lifetime of the Township of King, in the County of York, Yeoman, was in his lifetime and at the time of his death hereinafter mentioned, seised of or otherwise well and sufficiently entitled to the following lands and premises, that is to say: That certain parcel or tract of land and premises, situate, lying and being in the Township of King, in the County of York, being composed of (*describe lands*).

2. On or about the 24th day of February, A.D. 19 , and while he was so seised of the said lands and premises. the said *W.K.* died, intestate.

3. The said *W.K.* left him surviving his widow the defendant *E.K.* and ten children, namely, the plaintiffs, the defendants *E.P.* and *R.J.K.* and *M.A.P.*, wife of one *J.J.P.*, *G.W.K.*, *A.E.K.*, and *S.K.*, his sole heirs and heiresses at law.

4. The said *M.A.P.* died shortly after the said *W.K.*, leaving her said husband, *J.J.P.*, and the infant defendants *I.L.P.* and *M.P.*, her only children and heiresses at law, her surviving.

5. On the day of letters of administration were granted to *E.P.* of all the estate, real and personal, of the said *W.K.*; and on the day of letters of administration of all the estate, real and personal, of the said

M.A.P. were granted to the said *E.P.*, and no caution has been registered by the said *E.P.* administrator of the said estates, and the real estate to which the said *W.K.* and *M.A.P.* respectively died entitled, including their estates and interests in the lands and premises in question in this matter have vested in their respective heirs at law.

6. By indenture bearing date the 17th day of February, A.D. 19 , made between the above named *G.W.K.* of the first part, and the defendant *R.J.K.* of the second part, the said *G.W.K.* did grant, convey and transfer to the said defendant *R.J.K.* all his undivided share and right, title and interest in and to the real estate of, or to which the said *W.K.* died possessed or entitled.

7. By indenture bearing date the 24th day of January, A.D. 19 , made between the above named *A.E.K.* and *S.K.* of the first part, and the defendant *R.J.K.* of the second part, the said *A.E.K.* and *S.K.* did grant, convey and transfer to the said defendant *R.J.K.* all their undivided share and right, title or interest in or to the real estate of, or to which the said *W.K.* died possessed or entitled.

8. The plaintiffs and the defendant *E.P.* are each entitled to a tenth share in the said lands and premises, the defendant *R.J.K.* is entitled to four-tenths of the said lands, and the defendants *I.L.P.* and *M.P.* are entitled in equal shares to one-tenth of the said lands.

9. The defendant *E.K.*, as the widow of the said *W.K.*, is entitled to dower in the whole of the said lands and premises.

10. The plaintiffs submit that they are entitled to a partition or sale of the said lands, and to a division of the same or the proceeds thereof amongst the parties entitled thereto.

11. The said parcels of land have always been used together as a farm, and are chiefly available as farming lands, and the plaintiffs shew that having regard to the nature and circumstances of the said lands and premises, and to the number of persons entitled to share therein, it would be much more advantageous for all parties that the same should be sold, and the proceeds divided amongst the parties entitled thereto.

The plaintiffs claim:

1. A sale of said lands, and a division of the proceeds thereof amongst the parties entitled thereto, according to their several shares or proportions.

2. Or to have the said lands partitioned and divided amongst the said parties.
 3. To have for the purposes aforesaid, all proper directions given and accounts taken.
 4. Payment of their costs of this action.
 5. Such further and other relief as may be just] (*a*).
-

1340

Claim for a
declaration of
rights.

That the rights and interests of all parties in the said real and personal estate may be ascertained and declared.

1341

Claim for
partition.

1. That a partition may be made of the said lands under the direction of this Honourable Court, according to the respective interests of the parties entitled thereto. .

2. That all proper and necessary conveyances and assurances may be executed for carrying such partition into effect, and all proper directions given for that purpose, and as to the custody of the title deeds and writings relating to the said tenements and hereditaments.

1342

Judgment for
partition or
sale.

See Form No. 887.

1343

Another form.

(Formal parts: see No. 852.)

1. This Court doth declare that the plaintiffs herein are entitled each to an undivided one-eighth share of or interest in all and singular that certain parcel or tract of land and premises situate, lying and being in the said City of London and being composed of, &c,

2 and 3. (*As in paragraphs 2 and 3 of Form 887.*)

4. And this Court doth further order and adjudge that the said Master do take an account of the rents and profits of the said real estate received by the defendant since the death of in the pleadings mentioned, and an account

(*a*) An action for partition will, since Rule 956, be proper only in special circumstances and where, combined with partition, some other relief is necessary, *e.g.*, recovery of the land from one of the persons entitled where he claims a right to the whole.

of what is due from the defendant in respect of any part of the said real estate occupied by the defendant since the same date and do apportion the same between the parties hereto in accordance with the declaration contained in the first paragraph hereof.

5. [And this Court doth further order and adjudge that the costs of the plaintiffs and the defendants shall be taxed and that the plaintiffs do pay to the defendant or the defendant do pay to the plaintiffs, as the case may be, the difference between five-eighths payable by the plaintiffs of the defendant's costs and three-eighths payable by the defendant of the plaintiffs' costs.]

SECTION IV.—CUSTODY OF INFANTS.

In the High Court of Justice.

In the matter of *A.B.* and *C.D.*, infants.

And in the matter of The Revised Statutes of Ontario, chapter

1344

Petition of the mother for custody or access.

To the Judges of the High Court of Justice:

The petition of *E.F.*, wife of *D.F.*, of, &c., sheweth as follows:

1. (*State the marriage and the infants issue thereof.*)
2. (*State the present custody of the infants and the circumstances in which the intervention of the Court is required according to the facts.*)

The petitioner therefore prays:

That the said infants may be ordered to be delivered into the custody of the petitioner.

Or, that the said *D.F.* may be ordered to permit the petitioner to have access to the said children at such times and subject to such regulations as to this Honourable Court may seem proper, *or as the case may require.*

And that the said *D.F.* may be ordered to pay the costs of and incidental to this application.

1345

Notice of motion for custody of an infant.

In the High Court of Justice.

Or, In the Surrogate Court of the County of (a).

In the matter of _____ of _____, an infant under the age of twenty-one years.

Take notice that a motion will be made before the presiding Judge in Chambers at Osgoode Hall, Toronto [*or where the motion is in the Surrogate Court, before _____ Judge of this Court at his Chambers at _____,] on _____ the day of _____, 19 _____, at the hour of _____ o'clock in the forenoon, or so soon thereafter as the motion can be made; on behalf of C.B., of _____, the mother of the above named infant, for an order that the said C.B. do have the custody of the said infant, and that D.B., the father of the said infant, do pay to the said C.B. the sum of _____ dollars weekly for the maintenance of the said infant, or for such other order as may seem just.*

And take notice, &c. (*As in No. 403*).

Dated, &c.

(Signed)

Solicitor for the said C.B.

(*Formal parts as in Nos. 902 and 1345.*)

1346

Order thereon.

1. It is ordered that C.B., the mother of the above named infant, do have the custody of the said infant during [his] minority or until further order.
2. And it is further ordered that (*such provisions as to the father having access to the infant as may have been directed.*)
3. And it is further ordered that D.B. of _____, the father of the said infant, do pay to the said C.B. on the day for each week at the office of _____, the solicitors for the said C.B., the sum of _____ dollars for the maintenance of the said infant in the custody of the said C.B.
4. And it is further ordered that the said D.B. do pay to the said C.B. her costs of this application forthwith after taxation thereof.

(a) See R. S. O. 1897 c. 168, s. 1.

(Formal parts: see No. 902.)

1347

1. Upon the petition of *M.O.*, wife of *C.O.*, of the Township of _____, in the County of _____, farmer, the mother of the above named infant, and upon reading the said petition and the affidavits of the said *M.O.* and of _____ and _____, and upon hearing counsel for the petitioner and for the respondent *C.O.*

Order of judge in chambers for delivery of an infant for custody.

2. It is ordered that the said *C.O.* do forthwith deliver the above named infant into the custody of the petitioner to remain in her care and custody until [the said infant shall attain the age of twelve years,] or until this Court or a Judge shall make other order to the contrary.

3. And it is further ordered that the said *C.O.* be at liberty to move to rescind this order as he may be advised.

SECTION V.—SALES OF INFANTS' ESTATES.

In the High Court of Justice.

In the matter of *E.B.* and *F.B.*, infants under the age of twenty-one years.

1349

Petition for sale of infants' estate under R.S.O., c. 168, s. 3.

To the Honourable the Judges of the High Court of Justice for Ontario:

The humble petition of *E.B.* and *F.B.*, both of the Village of _____, in the County of _____, infants under the age of twenty-one years, by *M.B.* of the same place, widow, their mother and next friend, and the said *M.B.*, (b)

SHEWETH:

1. Your petitioners *E.B.* and *F.B.* are two of the children of *A.B.*, late of the Village of _____, in the County of _____, [farmer], who died intestate on the _____ day of _____, in the year 19 _____.

2. The said *A.B.* left him surviving your petitioner *M.B.*, his widow, and five children only, namely *G.*, who is of the full age of twenty-one years, and is now married to one *A.W.*, of the Township of _____, yeoman, *H.B.*, of the Township of _____, yeoman, who is also of the full age of twenty-one

(b) The petition is to be presented, in the name of the infant, by his guardian, or by a person applying by the same petition to be appointed guardian: see Con. Rule 963.

years, *J.B.*, who subsequently died intestate, unmarried and without issue, on the day of , and your petitioner *E.B.*, who is twelve years of age, and your petitioner *F.B.*, who is nine years of age.

3. The said *A.B.* never had any other children, and your petitioners and the said *G.W.* and *H.B.* are his sole and only heirs and heiresses at law.

4. Your petitioner *M.B.* was duly appointed by the Surrogate Court of the County of , and she is now the sole administratrix of the estate of the said *A.B.*, deceased.

5. [The said *A.B.* died possessed of a small amount of personal property, consisting of household furniture, which was of the aggregate value of, and actually realized \$300, and farm stock, consisting of a small quantity of grain, a few farming implements, and a few head of cattle, which was of the aggregate value of, and actually realized \$400; but the said personal property has been all exhausted in the payment of debts due by the said *A.B.* at the time of his death, and his funeral and testamentary expenses] (a)

6. The said *A.B.* was, at the time of his death, seised of the following real estate, namely, [village lot number one, on the north side of W Street, in the said Village of B , containing a quarter of an acre, and lot number 5 in the 6th concession of the Township of , in the County of , containing 200 acres] (a)

7. The said village lot was used by the said *A.B.* for a garden, and for one year since his death was rented for that purpose; but, with that exception, it has been and now is vacant and unproductive, and the same cannot be made productive except by the erection of a building thereon; but your petitioners have no means of erecting a building upon the said lot, and the said *G.W.* and *H.B.* are unwilling to join with your petitioners in raising money by mortgage of the said lot, in order to put up a building thereon.

8. The said lot could not in any event be rented in its present condition for more than \$20 per annum, and taxes.

9. The taxes upon the said village lot amount to \$ per annum, and your petitioners *E.B.* and *F.B.* have no means to meet their share thereof, and there is now \$ of taxes in arrear upon the said lot, and the same is advertised for sale on the day of next, and will then be sold for taxes unless the arrears be sooner paid.

10. One *R.L.* of the said Village of B , merchant, has offered to purchase the said village lot for the sum of \$, which your petitioners are advised is a fair price for the same, and the said *G.W.*, *H.B.* and your petitioner *M.B.* have agreed to concur in a sale of the said lot to the said *R.L.*, at that sum, and your petitioners *E.B.* and *F.B.* submit that their interests require and will be substantially promoted by the acceptance of the offer of the said *R.L.*

11. Upon the said lot number 5 there is a small saw mill, but the same has not been worked since the death of the said *A.B.*, and is now greatly out of repair and neither your petitioners nor the said *G.W.* or *H.B.* have any means for repairing the same and the said lot has been since the death of the said *A.B.* wholly unproductive.

12. The said last mentioned property is well timbered and of the value of \$, and the said saw mill and timber constitute the principal value of the said lot, but by reason of the danger of fire spreading to the said lot during the summer months the same is liable to be greatly depreciated in value.

13. Your petitioners submit that from the nature of the property it would be inexpedient to attempt to rent the said last mentioned lot.

14. The amount required to place the said mill in proper repair is about the sum of \$, but even if that sum could be raised and expended upon it your petitioners and the said *G.W.* are unable and the said *H.B.*, although able is unwilling to work the said mill, and your petitioners submit that it is not advisable to expend any money upon the said mill nor to attempt to hire any person to work the same.

15. Your petitioners submit that it is necessary in the interest of your petitioners *E.B.* and *F.B.*, that the said lot 5 should be sold, and the said *G.W.* and *H.B.*, and your petitioner *M.B.*, are willing to consent to the same being sold under the order and direction of this Honourable Court.

16. Your petitioner *M.B.* is willing to release her dower in all the said real estate, and also her interest therein in right of the said *J.B.*, deceased, and to accept in lieu thereof such sum in gross as this Honourable Court may think reasonable.

17. Your petitioners *E.B.* and *F.B.* further shew that they have no other property or means of livelihood except their interest in the said real estate, and that by reason of their tender years they are unable at present to earn anything towards defraying the expenses of their maintenance and education.

18. No guardian has been appointed for your petitioners *E.B.* and *F.B.*, but your petitioner *M.B.*, is willing to be their guardian if appointed by this Honourable Court.

19. Your petitioners *E.B.* and *F.B.* are now attending the Public School in the said Village of , and they submit that it would be for their benefit that they should be enabled to attend school continuously until they respectively attain the age of fifteen years.

20. Your petitioners *E.B.* and *F.B.* further submit that in the event of the said real estate being sold, that their respective shares in the purchase money should be paid into this Honourable Court, and that the interest which may accrue on their respective shares, together with so much of the principal money as may be required to make up the sum of \$120 per annum for each of your petitioners *E.B.* and *F.B.*, until they respectively attain the age of fifteen years, should be applied towards their maintenance and education, and that thereafter the interest only of their said shares should be applied towards their maintenance until they respectively attain the age of twenty-one years.

Your petitioners therefore pray:

1. That the offer of the said *R.L.* to purchase the said village lot. number six, may be accepted and that upon payment of his purchase money into Court, a conveyance may be made to him of the said lot.

2. And that the said lot number five may be ordered to be sold by public auction, private contract or tender, as may seem best.

3. That the shares of the said *G.W.*, *H.B.*, and *M.B.*, in the said purchase money may also be ascertained and paid to them out of the proceeds of the said sales.

4. That the costs of this matter may be also ordered to be paid out of the proceeds of the said sales.

5. And that the shares of your petitioners *E.B.* and *F.B.*, may be ordered to be paid into this Honourable Court, and that such suitable provision may be made

thereout for the maintenance and education of your petitioners *E.B.* and *F.B.*, as in the 20th paragraph of this petition mentioned, or in such other manner as to this Honourable Court shall seem proper.

6. And your petitioners further pray that the said *M.B.*, or some other fit and proper person, may be appointed the guardian of the person [and estate] of your petitioners *E.B.* and *F.B.*, during their minority.

7. And that all proper directions may be given and accounts taken, and that your petitioners may have such further and other relief as to this Honourable Court may seem just.

And your petitioners will ever pray, &c.

(*Full style of matter, see No. 1349.*)

The examination of the above named infants *E.B.* and *F.B.*, taken before me apart (a) under the provisions of Consolidated Rule 966, this day of , 19 , at my Chambers, in the City of .

1350
Examination
of infants
above the age
of fourteen
years, taken
under Rule
966. (b)

E.B. being examined by me, says: I am a son of the late *A.B.* He died in the month of , 19 . I am living with my mother, *M.B.* I have heard read the petition in this matter. I am now sixteen years of age. I understand that the object of the petition is to obtain the sanction of the High Court of Justice to the sale of the two lots mentioned in the petition, and to have my share of the proceeds of the sale applied, so far as may be necessary, towards my support and education; and also, that my mother may be appointed my guardian. I consent to the prayer of the petition; and I think it will be for my interest that the land should be sold, and that my mother should be appointed my guardian. I understand that I am entitled to a fifth share in the two lots, and that my share cannot be sold without my consent. I know that the village lot is lying vacant, and that nothing is got for it. I have seen the mill on the other lot. It is out of order. It has not been working since my father died, so far as I know. It is not far from B. I often go out there. My mother is kind to me. I am attending the public school at

(a) See Con. Rule 966 (1).

(b) The examination is to be annexed to the petition. See Con. Rule 966 (3).

B. I can read and write. I am in the second book. My sister *F.* goes to school with me.

E.B.

Here the Master may properly add such observations as to the intelligence or otherwise of the child, as he may think necessary for the information of the Court.

F.B. being examined by me, says: I am a daughter of the late *A.B.* Father died in , 19 . I am living with my mother. I cannot read. No one has read the petition in this matter to me. I don't know what it means, or what it is about. (I explain that the object of the petition is to obtain the sanction of the Court to the sale of the two lots mentioned in the petition, and for the appointment of *M.B.* as guardian for the said *F.B.* She appears to me to understand the explanation I give her, and states): Having heard the object of the petition explained to me by the Master, I consent to it. I think it would be best that the lands should be sold. I know that I am entitled to a share in the two lots mentioned in the petition, and I understand that my share cannot be sold without my consent. My mother is kind to me. I should like her to be appointed my guardian. I am attending the public school at B. I have been going there since last. I think it would be best for me that I should be allowed to attend school until I can read and write well. I am now over fourteen years old.

F.B.

I certify that the foregoing examinations of the said *E.B.* and *F.B.* were taken by me, apart, at my chambers, at the City of , on , the day of , 19 , under the provisions of the Consolidated Rule 966.

Dated this

A.B.

Master at (a).

(Style of matter, see No. 1349.)

1351

Certificate of
Master of pro-
duction of
infant under
fourteen
years. (a)

I certify that the above named infant *C.D.* was on this day of , 19 , produced before me, at my Cham-

(a) See Rule 967.

bers, at _____, and that he appeared to me to be under the age of fourteen years.

Dated, &c.

A.B.,
Master at _____.

(Style of matter, see No. 1349.)

Examination of witnesses taken before me *vivâ voce* in support of the petition in this matter under the provisions of Consolidated Rule 968, at my Chambers at _____, this day of _____, 19 ____.

1352
Examination of witnesses in support of petition.

A.B., of _____, in the County of _____, farmer, being called on the part of the petitioners, and being duly sworn, states:—I knew the late A.B., &c.

A.B.,

I certify that the foregoing depositions were taken before me *vivâ voce* under the provisions of Consolidated Rule 968, at my Chambers, at _____, this _____ day of _____.

N.W.,
Master at _____.

(Style of matter, see No. 1349.)

I, H.B., of _____, in the County of _____, yeoman, do hereby consent that the lands and premises mentioned in the petition in this matter, namely, village lot number six, &c. (*describing land as in the petition*), be sold under the direction of this Honourable Court, and I agree to join in the conveyance to the purchaser, and to accept such part of the purchase money as may be awarded to me by this Honourable Court.

1353
Consent of adult parties jointly interested with infants in lands sought to be sold.

Dated, &c.

H.B.

Witness,
F.W.

The consent must be verified by affidavit. See No. 774.

1354

Consent of
mortgagee
where the land
sought to be
sold is subject
to a mortgage.

(Style of matter, see No. 1349.)

I, C.D., of _____, in the County of _____, merchant,
the mortgagee of lot number, &c. (*describing it as in the peti-
tion*), do consent that the said lot be sold freed from my said
mortgage, under the order of the High Court of Justice to
be made in this matter, and I do hereby agree to accept pay-
ment of my mortgage debt out of the proceeds of the sale to
be had under such order, and upon such payment to release
and discharge my said mortgage.

Dated, &c.

C.D.

Witness,
F.W.

This consent must be verified by affidavit. See No. 774.

(Style of matter, see No. 1349.)

1355

Consent of
widow to sale,
free from
dower, where
she does not
join in the
petition.

I, M.B., of _____, in the County of _____, widow of
A.B., deceased, do hereby consent that lots (*describe land as
in the petition*) be sold under the order of this Honourable
Court to be made in this matter, freed from my dower, and
I do hereby agree to join in the conveyance of the same, and
to accept such sum in gross out of the proceeds of such sale, in
lieu of my said dower, as this Honourable Court shall think
reasonable.

Dated, &c.

M.B.

Witness,
F.W.

This consent must be verified by affidavit. See No. 774.

1356

Order for sale
of infants'
estate, &c.

In the High Court of Justice,
the day of _____, A.D. 19 ____.

Master
[or X.Y. Official
Referee.]
In Chambers.

In the matter of A.B.,
C.B., and D.B., all infants
under the age of 21 years.

1. Upon the humble petition of the above-named infants by *J.B.*, of _____, in the County of _____ [farmer], their father and next friend, and of the said *J.B.*, presented unto this Court this day, upon reading the said petition, and the depositions taken before [the Master in Ordinary and the Masters of this Court at Belleville and Kingston], and the examination of the said petitioners *A.B.* and *C.B.*, taken before the [Master in Ordinary and the said Master at Kingston, and the certificate of the said Master at Kingston as to the said petitioner *D.B.*], and upon hearing the solicitor for the said petitioners, and it appearing that it is necessary, for the maintenance and education of the said infants, that [part of] the lands in the said petition mentioned should be sold, [or it appearing that the lands in the said petition mentioned are exposed to waste and dilapidation, or to depreciation, by reason of (*stating cause*), and that the interest of the said infants requires and will be substantially promoted by a sale of the said premises], and it appearing that *J.B.* is a fit and proper person to be appointed guardian of the above named infants and their estates:

2. It is ordered that the said *J.B.* be and he is hereby appointed guardian of the persons and estates of the said infants, he first giving security to the satisfaction of [the Master of this Court at Kingston], before he in any way intermeddles with the estate of the said petitioners by virtue of this order.

3. It is further ordered that the following lands, being all and singular those certain parcels or tracts of land and premises in the said petition mentioned [*or if a part only is to be sold, describe lands to be sold specifically*, and add, being part of the lands in the said petition mentioned], be forthwith sold with the approbation of the said [Master at Kingston], freed from the mortgage of _____ [and the dower of _____], in the said petition mentioned.

4. And it is ordered that the purchaser or purchasers do pay his or their purchase money into Court, to the credit of this matter, subject to the order of this Court, and all proper parties are to join in the conveyances to the purchasers as the said Master shall direct, and the said Master is to execute the said conveyances on behalf of the said infant *D.B.*

5. And it is ordered that the said Master do take an account of the amount due to the said _____ in respect of their mortgage [and also fix a sum in gross to be allowed to the said _____ in lieu of dower], and to tax to them their costs of this matter.

6. And it is ordered that the said Master do inquire and state of what the fortune of the said infants consists, and what (if anything) would be a proper sum to be allowed for the future maintenance and education of the said infants during their minority, having regard to the amount of their fortune and position in life [and the ability of their said father to maintain them], and for what time such allowance should be paid.

7. And it is further ordered that the said Master do tax to the said petitioners their costs of this matter as between solicitor and client.

8. And it is further ordered that the said purchase money when paid into Court be applied—

First. In payment of the amount found due to upon their said mortgage [and of the sum in gross to be allowed to the said in lieu of dower], according to their priorities, to be settled by the said Master.

Second. In payment of the costs of the said petitioners as between solicitor and client.

9. And it is ordered that the residue of the purchase money be invested for the benefit of the said infants in equal shares and such part of the income thereof [and also of the principal money of their respective shares] as the said Master shall direct, be paid to the guardian for the said infants from time to time for the maintenance and education of the said infants, and the residue of the said shares, with any interest which may accumulate thereon, be paid to the said infants respectively as they shall respectively attain their majority, unless this Court in the meantime make any other order concerning the same.

1357

Order allowing a mortgage of estate of infants.

(*Style of matter, see No. 1356.*)

1. Upon the petition of the above named infants upon reading the said petition, the examination of the said infants, of (*give names of other witnesses*) and the affidavits of and upon hearing the solicitor for the said petitioners, the Official Guardian *ad litem* appearing and not objecting thereto;

2. It is ordered that the said petitioners be at liberty to mortgage the lands mentioned in the said petition, being (*set out description of lands*) for a sum not exceeding dollars, bearing interest at the rate of per cent. per annum, such interest to be paid (*set out time for payment*) on all sums remaining unpaid, the principal sum of dollars to be payable in years from the date of the said mortgage, such mortgage to contain a provision (*set out special provisions.*)

3. It is further ordered that the said mortgage be settled by the (*give name of officer to whom it has been referred*) who is to execute the same on behalf of such of the said infants as are unable to execute the same for themselves.

4. It is further ordered that the said mortgage money be paid into Court to the credit of this matter, and be applied:

Firstly, in payment of the .

Secondly, in payment of .

Thirdly, in payment of the costs of this application and of preparing and procuring the execution of the said mortgage, when taxed as between solicitor and client, such costs to include those of the Official Guardian of and incidental to this application. And the residue is to abide the further order of a Judge of this Court in Chambers (*or as may be*).

[5. And it is further ordered that the said moneys be paid out with the privity of the said Official Guardian *ad litem*.]

SECTION VI.—APPOINTMENT AND REMOVAL OF GUARDIANS.

In the High Court of Justice.

(*Style of the Action.*)

And in the matter of *E.B.* and *F.B.*, infants,
under the age of twenty-one years.

1358

Notice of motion for the appointment of a guardian of the person, where an action is pending. (a)

(a) See also Form 1327. Where it is considered more advisable to file a petition, it can be readily framed from the affidavit: No. 1360, clauses 1 to 6. It must, of course, be the petition of the infant by his next friend. Where the infant is of unsound mind, not so found; see No. 1372.

(*Proceed as in Nos. 403 or 1326; and continue thus*): on the part of the plaintiff [or, defendant, or, above named] A.B., an infant, by C.D., of (*residence and addition*), his next friend,—That the said C.D. [*state degree of relationship, if any, to the infant; as thus*: the maternal uncle of the said infant], or some other proper person, may be appointed the guardian of the person of the said A.B. during his minority, or until further order—*Add, if desired, a direction for payment of the costs of the application: see No. 1359 par. 3.*

1359

The like of the person and estate—or estate only.

(*Proceed as in Nos. 403 or 1326; and continue thus*:) on the part of the above named infant A.B., by the above named C.D., of (*residence and addition*), his next friend:

1. That the said C.D. [*state degree of relationship, if any, to the infant: as thus*: the brother of the said infant], or some other proper person, may [*if so*: upon giving security] be appointed the guardian of the person and estate [*or, the guardian of the estate*] of the said A.B. during his minority, or until further order.

If the guardian is to pass accounts, add: 2. And that the said C.D., or other such guardian, may from time to time pass his accounts, and pay the balances which shall be certified to be due from him into Court to the credit of this matter; and that the interest to accrue thereon may be paid to the said _____ for the maintenance of the said _____ during his minority and the principal money to the said _____ on his attaining his majority (*or as may be*).

If any provision as to costs is necessary, add: 3. And that the costs of this application may be taxed as between solicitor and client; and that the said C.D., or other such guardian, may retain and pay the same out of any moneys of the said infant which may come to his hands, and be allowed the same on passing his said accounts (*or as may be*).

1360

Affidavit in support of application to appoint a guardian.

(*Style of matter, see No. 1358.*)

We, C.D., of (*residence and addition*), and W.R., of, &c., severally make oath and say as follows:—

And first I, the said C.D., for myself, say as follows:

1. I am the person proposed to be appointed the guardian of the above named infant A.B. [*or, A.B., the in-*

fant named in the notice of motion , in this matter, dated the day of , 19 , or as may be].

2. *Shew infant's age; as thus:* The said A.B. is now of the age of years, and upwards. He is "A., son of C. and L.B."

3. *Shew nature and amount of infant's fortune; as thus:* The said A.B. is absolutely entitled, under the will of his maternal uncle E.F., late of (*residence and addition*), deceased, to the following properties, namely:

(1) A freehold estate, being part of lot 7, in the 8th concession of G., in the County of H., containing about 80 acres, and held by L.M. on lease at \$120 a year.

(2) \$800 Dominion Stock standing in the names of R.S. and T.W., the trustees of the will of the said E.F.

(3) \$500 cash in the hands of the said R.S. and T.W., arisen from the dividends on the said stock.

The said A.B. is also entitled under the said will, in remainder expectant on the death of N.F., to a life interest in Dominion Stock, also standing in the names of the said R.S. and T.W., the trustees thereof.

4. *Shew what relations the infant has, as thus:* The only relations of the said A.B. now living are:—(1) This deponent, his maternal uncle; (2) S.H., wife of T.H., of (*residence and addition*), the half-sister of the said A.B.; and (3) R.D.V. the half-brother of the said A.B., who is a captain in His Majesty's army, and is now stationed with his regiment at Bombay, in the East Indies.

5. *Shew where the infant is now residing, and under whose care; as thus:* The said A.B. was, at the time of the death of his father, C.B., which happened on the 19 , and is now residing, as a student, at college,

6. *State willingness to act as guardian; as thus:* I am willing to act as the guardian of the person and estate (*or as may be*) of the said A.B., during his minority, in case this Honourable Court shall think fit to appoint me to that office.

7. *Shew means of knowledge.*

And I, the said *W.R.*, for myself, say as follows:

8. *Shew fitness of proposed guardian; as thus:* I know and have for years last past been well acquainted with the deponent *C.D.* The said *C.D.* is married, and has three children, namely: a son of the age of years; and two daughters of the respective ages of and years. The said *C.D.* resides with his wife and children at (*state where*). In my judgment and opinion the said *C.D.* is a fit and proper person to be appointed the guardian of the person and estate (*or as may be*), of his nephew the said infant *A.B.*, for the following reasons (*state them*).

(*Short style of cause.*)

1361
Consent of
guardian to
act.

I, the undersigned *C.D.*, of (*residence and addition*), do hereby consent to accept the office of guardian of the person and estate (*or as may be*), of the above named infant *A.B.* (*or as may be*). in case the Court shall think fit to appoint me to that office. Dated this day of , 19 .

C.D.

Signed by the said *C.D.* }
in the presence of
J.K.

This consent should be verified by affidavit. See No. 774.

(*Style of matter, see No. 1358.*)

1362
Order ap-
pointing a
trust company
as guardian
of estate.

1. Upon the petition of the above named infants presented this day unto this Court by and *M.T.B.*, the guardian of the person and estate of the infants *C.E.L.* and *R.J.L.* in the State of Iowa, one of the United States of America; upon hearing read the affidavits of *F.W.H.* and of the above named infant, *J.B.L.*, and the letters of guardianship of the Circuit Court of Lee County in the State of Iowa appointing the said *M.T.B.* guardian of the person and estate of the infants *C.E.L.* and *R.J.L.*; and upon hearing read [the reports made in the two matters above mentioned] and what was alleged; and it appearing that the infant petitioners are entitled to certain moneys in Court to the credit of the said matters, and are the owners of certain

real estate in the City of Hamilton, and that they have no guardian in this country to superintend and look after the management of their estate, and [The Toronto General Trusts Corporation] appearing by their solicitor and consenting to act as such guardian until this Court shall make further order to the contrary:

2. This Court doth order that the said [Toronto General Trusts Corporation] be and they are hereby appointed guardian of the estates of the said infants during their respective minorities unless this Court shall make other order to the contrary:

3. And this Court doth further order that the said [Corporation] do forthwith effect a further and sufficient insurance upon the buildings erected upon the property of the said infants situated in the said City of Hamilton aforesaid, and that they do take steps forthwith to collect the rents in arrear in respect of the said lands and premises and do also from time to time collect the growing rents of the said lands and premises as the same shall fall due and payable:

4. And this Court doth further order that out of each of the respective shares of the infants *C.E.L.* and *R.J.L.* in the net rents and profits of the said real estate which shall come to the hands of the said [Corporation] to which the said *C.E.L.* and *R.J.L.* shall from time to time be entitled, the said [Corporation] do from time to time until the said *C.E.L.* and *R.J.L.* shall respectively attain their majority or until this Court make further order to the contrary, whichever event may first happen, apply the sum of \$300 per annum for their respective support, maintenance and education, and that the same be paid by the said [Toronto General Trusts Corporation] to the said *M.T.B.*, the said guardian of the said two last named infants, and that the said [Toronto General Trusts Corporation], out of the share of the said net rents and profits which shall come to the hands of the said [Corporation] to which the said infant *J.B.L.* may be entitled, do pay to the said infant *J.B.L.* the amount of \$300 per annum, and that in addition thereto they do pay to him as soon as the same shall be realized one-fourth of the net rents now in arrear after deducting the amount to be paid for effecting additional insurance.

5. And this Court doth further order that in case the said rents and profits which shall come to the hands of the said [Corporation] shall be insufficient for the payment of the amounts hereinbefore ordered to be applied for the maintenance of the said infants as aforesaid that there be paid out

of the income arising from the moneys in Court to which the said infants are entitled from time to time to the said [Corporation] such sums as may be necessary to make up the sums hereinbefore directed to be paid for the maintenance of the said infants upon a certificate of the Official Guardian being filed with the Accountant certifying the amount necessary to be paid upon the application for any such payment.

6. And this Court doth further order that the said [Toronto General Trusts Corporation] as such guardian (subject to the supervision of the Master in Ordinary of this Court) do take such steps as may be necessary from time to time to let or relet the premises in question, or any part thereof, and also to enforce any forfeiture that may be incurred by reason of the breach of any condition contained in any lease now subsisting or hereafter created during the time they may continue as such guardian, and that they do take all steps necessary to keep said premises sufficiently insured and properly repaired.

7. And this Court doth further order that all leases and conveyances necessary to be executed in reference to the property hereby committed to the guardianship of [the Toronto General Trusts Corporation] be settled by the said Master as the said Master shall direct.

8. And this Court doth further order that the said [Toronto General Trusts Corporation] do pass their accounts annually before the said Master, [and that the said Master do tax to the Official Guardian *ad litem* his costs of and incidental to this application and of the proceedings thereunder from time to time, and that the same be transferred out of the funds in Court to the credit of the said matters or any of them to which the said infants are entitled to the account of the Official Guardian *ad litem*], and that the said Master do allow to the said [Toronto General Trusts Corporation] their commission for the management of the estates in question in the manner and to the same extent as commission is allowed to executors and receivers, and do tax to them their costs of and incidental to their dealings with the said estates and of passing their accounts from time to time.

9. And this Court doth further order that the said [Toronto General Trusts Corporation] do from time to time pay into Court to the credit of this matter, subject to the order of this Court, the net balances which may be reported to be in their hands after making the payments hereinbefore directed.

1363

Know all men by these presents, that we, *A.B.*, of (*residence and addition*), *C.D.*, of, &c., and *E.F.*, of, &c., are jointly and severally held and firmly bound unto *A.N.B.*, Esquire, Accountant of the Supreme Court of Judicature for Ontario, in the penal sum of \$ of lawful money of Canada, for which payment well and truly to be made to the said *A.N.B.*, his heirs, executors, administrators, successors in office, or assigns, we bind ourselves, and each of us binds himself, our and each of our heirs, executors, and administrators respectively, firmly by these presents.

Sealed with our seals, and dated this day of ,
in the year of our Lord .

Whereas by an order of the High Court of Justice for Ontario, made in a certain cause wherein are plaintiffs, and defendants [*or, in the matter of, set out short title of same*], dated the day of , 19 , it was ordered that it should be referred to the Master of this Court, [at], to appoint some fit and proper person to be guardian of the persons and estates of *G.F.* and *M.F.* (*naming the infants*) (*a*). And whereas the said Master hath appointed the said above bounden *A.B.* as such guardian, and hath approved of the above bounden *C.D.* and *E.F.* as sureties for the said *A.B.*, and hath also approved of the above written obligation, with the underwritten condition, as a proper security to be entered into by the said *A.B.*, *C.D.*, and *E.F.*, pursuant to the said order and the Consolidated Rules of the Supreme Court of Judicature in that behalf, and in testimony of such approbation hath signed an allowance in the margin hereof. Now the condition of this obligation is such, that if the above bounden *A.B.* do and shall, according to the practice of the said Court, as often as he shall be required, make a just and true account of the personal estate, and rents and profits of the real estate of the said *G.F.* and *M.F.*, or either of them as now are, or shall hereafter come to the hands, custody, or possession of the said *A.B.*, and which he may receive out of or concerning the said estate, and shall carefully observe, perform, and keep the orders and directions of the said Court touching or concerning the said *G.F.* and *M.F.*, or either of them, their, his, or her estate, and touching all such moneys as shall remain due upon the foot

(*a*) Where the order appoints the guardian, and merely refers it to the Master to settle the security, the recital will have to be varied accordingly.

Bond by
guardian of
the persons
and estates of
infants, male
and female.

of his accounts duly taken by the said Master, and shall be careful to see the houses, buildings, and structures of the said *G.F.* and *M.F.*, and of each of them, to be well and sufficiently repaired, and so kept and maintained, during the continuance of the said wardship, and shall carefully preserve and keep all the deeds, evidences, and writings touching the lands and estates of them the said *G.F.* and *M.F.*, and each of them, which now are, or shall hereafter come to his hands, custody, or possession, and shall provide for the persons of the said *G.F.* and *M.F.*, and for their safety, and shall not sell or alienate his interest in the said custody or wardship to any person or persons whomsoever, without the order of the said Court having been first obtained in that behalf, and shall not permit or suffer the said *G.F.* and *M.F.*, or either of them, during the said wardship, to marry without the consent of the Court, and shall in all things demean himself as a careful and faithful guardian of the person and estates respectively of them the said *G.F.* and *M.F.*, then the above obligation shall be void and of none effect, otherwise the same is to be and remain in full force and virtue. (a)

Sealed, signed and delivered
in the presence of

(*In the margin.*) Allowed.

(*Signature of Master.*)

1364

Notice of motion to remove a guardian of the person, or supply a vacancy occasioned by death, or by the marriage of a female guardian.

Proceed as in No. 1358, to further order; and add: in the place of X.Y., his present guardian [or, now deceased—or, who has intermarried with W.U.—or as may be—and add, if desired, a direction for payment of the costs of the application. See No. 1359, par. 3.]

(*Formal parts: see No. 744.*)

1365

Affidavit in support.

1. *Shew how the guardian sought to be removed, or deceased, or married, was appointed.*

2. *Shew the grounds for such removal—or prove such death or marriage.*

(a) For affidavit of execution, see No. 1187; and for affidavit of justification by sureties, see Nos. 1161 and 1298.

3. *Shew the fitness to be appointed of the proposed guardian, and his consent to act.*

4. *Shew with whom, or under whose care, the infant is living.*

(*Formal parts: see No. 403.*)

on the part of the infant plaintiff (*or as may be*), by *C.D.*,
of , his next friend, that the said infant may be at
liberty to accompany *J.R.P.* (*guardian*) on an intended visit
to the L. C. R., in the K. of S.: on the undertaking of the
said *J.R.P.* that the said infant shall return within the jur-
isdiction of this Court within [two months] from this time,
or immediately, if so ordered by this Court.

1366

Notice of
motion for
leave to take
infant out of
the jurisdic-
tion.

(*Short title.*)

I, *A.B.*, the guardian of the person of the infant *C.D.*,
do hereby undertake that the said infant shall return within
the jurisdiction of this Court within months from this
time, or immediately, if so ordered by this Court, or any
Judge thereof.

1367

Undertaking
to bring in-
fant back.

Dated this day of , 19 .

A.B.

(*Formal parts: see No. 403.*)

on the part of the infant plaintiff (*or as may be*), by *C.D.*,
of , his next friend, that the time limited by the
order dated 19 , for the return of the said infant
within the jurisdiction of this Court, may be extended until
the day of , 19 , on the undertaking of *W.H.H.*,
one of his guardians, that he shall return within the jurisdic-
tion within the last mentioned time.

1368

Notice of
motion to ex-
tend time for
return of the
infant.

SECTION VII.—MAINTENANCE AND ADVANCEMENT—MAN-
AGEMENT OF PROPERTY OF INFANTS.

(*Formal parts: see No. 403.*)

1369

Notice of
motion for an
allowance for
maintenance.

on the part of the infant plaintiff, by C.D., of , his
next friend (*or as may be: see No. 1358*).

That the sum of \$ per annum may be allowed for
the maintenance and education of the said infant, as from
the day of , 19 , and for the time to come,
during his minority, or until further order.

If guardian of the person be also guardian of the estate,
add: And that such allowance may be retained and applied
by W.F., the guardian of the person and estate of the said
infant, by equal half-yearly payments on the day
of , and day of , out of the
income of the said infant's estate: the first of such payments
to be retained on the day of , 19 .

Or if a receiver has been appointed, or another person is
guardian of the estate, add: And that such allowance may be
paid by W.F., the guardian of the estate of the said infant
[*or, the receiver appointed in this cause*], by equal half-yearly
payments (*as above*); and that he may be allowed the same
on passing his accounts.

Or if to be paid out of a fund in Court, add: And that
such allowance may be paid to W.F., the guardian of the
said infant, by equal half-yearly payments (*as before*), out
of the interest to accrue from time to time on the \$
standing in Court to the credit of the plaintiff in this cause
(*or as may be.*)

Add, if desired, a direction as to the taxation and payment
of the costs of the application: see No. 1359.

(*Formal parts: see No. 744.*)

1370

Affidavit in
support of
motion for
allowance for
maintenance.

1. *Shew the age of the infant, the nature and amount of his
fortune, what relations he has, where he is residing, and under
whose care: see No. 1360.*

2. *Shew that the fund proposed to be operated upon for
maintenance is available for that purpose.*

3. *Show that the sum sought to be allowed for maintenance is a proper amount; and set forth, in a Schedule, a scheme for the application thereof, under the following or similar heads:—*

School bills
Clothing
Pocket money
Medical attendance
Maintenance, Travelling, and Incidental expenses in vacations

Total\$

(*Formal parts: see No. 403.*)

on part of the infant plaintiff *A.B.*, by *C.D.* of next friend (*or as may be*), that the sum of \$ annuum may be allowed, in addition to the sum of \$ annuum allowed by the order dated the day of 19 , making together \$ per annum, for the maintenance and education of the said infant *A.B.*, as from the day of , 19 , and for the time to come during his minority; and that such increased allowance of \$ a year may be raised and paid in the same manner as the said allowance of \$ is directed to be raised and paid by the said order of the day of , 19 , (*or as may be*).—
Add, if desired, a direction for payment of the costs; see No. 1359.

1371
his Notice of motion for an increase of maintenance.

In the High Court of Justice.

In the matter of *A.B.*, an infant under the age of twenty-one years, and a person of unsound mind, not so found.

To the Honourable the Judges of the High Court of Justice for Ontario:

The humble petition of *A.B.*, of , an infant under the age of twenty-one years, and a person of unsound mind, not so found, by *C.D.*, of (*residence and addition*), his next friend.

1372
Petition for the appointment of a guardian, and allowance for maintenance of an infant of unsound mind, not so found.

Sheweth as follows:

1. *Shew state of mind of the petitioner; as thus: Your petitioner is a person of weak or unsound mind; but he has never been so found by inquisition or other proceeding in lunacy.*

2. *Shew the age of the petitioner.*

3. *Shew the nature and amount of the petitioner's fortune; and that the fund proposed to be operated upon for maintenance is available for that purpose. See No. 1360.*

4. *Shew what relations the petitioner has.*

5. *Shew where the petitioner is now residing, and under whose care.*

6. It will be for the benefit and advantage of your petitioner that the said *C.D.* should be appointed guardian of his person and estate; and that an allowance of \$ should be made for his maintenance out of the income of his said property.

Your petitioner therefore humbly prays:

1. That the said *C.D.* or some other proper person may be appointed the guardian of the person of your petitioner during his minority, or until further order.

2. That the costs of this application may be taxed and paid out of the estate of said infant (*or as may be*).

3. That out of the interest to accrue from time to time on the sum of \$ may be allowed for the maintenance of your petitioner; and be paid half-yearly to his said guardian, until further order.

(*Formal parts: see No. 744.*)

1. *See No. 1370, pars. 1-3.*

2. *Prove by a medical man the present state of mind of the petitioner or applicant: see No. 1411.*

1373

Affidavit in
support of
petition or
motion.

(*Formal parts: see No. 403.*)

on the part of the plaintiff (*or as may be*): *see No. 1358*).

1374

Notice of motion for leave to article or apprentice an infant.

1. That the said infant may be placed out as an articulated clerk [*or, apprentice*] with *A.B.*, of (*residence and addition*), for the purpose of being instructed in the profession [*or, trade*] of a

2. That \$ may be allowed as a proper premium to be paid to the said *A.B.*, and the further sum of \$ for the outfit of the said infant.

3. That proper articles of clerkship [*or, a proper indenture of apprenticeship*] may be approved by

4. That upon the execution of such articles [*or, indenture*] by the parties thereto (*state how the premium, outfit, and costs are to be raised; as thus:*)

E.F., the guardian of the said infant, may, out of the rents and profits of his estate, pay to the said *A.B.* the said premium of \$; and apply the said \$ for such outfit.

Or, C.D., the trustee of the will of *E.W.*, deceased—
Or, B.C., the receiver appointed in this cause—may, out of the rents and profits of the said infant's estate, pay the said premium of \$ to the said *A.B.*, and pay the said outfit of \$ to the said *E.F.*; on the undertaking of the said *E.F.* to apply the same for that purpose.

Or, the said sum of \$ and \$ may be paid out of the moneys standing in Court to the credit of this matter (*or as may be*); the said \$ to the said *A.B.*, and the said \$ to the said *E.F.* (*&c.: as last above*).

5. *Add, if desired, a direction as to the costs: see No. 1359.*

(*Formal parts: see ante, No. 744.*)

1375

Affidavit in support.

1. The (above named) infant *G.H.* is now of the age of years. He has, of his own free will, chosen to be brought up to the profession [*or, trade*] of a ; and wishes to be articulated [*or, apprenticed*] to learn such profession [*or, trade*]. In my opinion, he is physically adapted for such profession [*or, trade*].

2. I have for years last past known, and been well acquainted with, *A.B.*, of (*residence and addition of master*); and during years last past he has been continuously and extensively engaged in his profession [*or, trade*] of a .

3. The said *A.B.* resides with his wife and family; and from my knowledge of him, and from inquiries I have made of various persons also acquainted with him, I believe the said *A.B.* to be a person of good moral character, of respectability and integrity, and well versed in the said profession [*or, trade*] of a . In my judgment and opinion, the said *A.B.* is a fit and proper person to have and fully competent to instruct, an articted pupil [*or, apprentice*] in the said profession [*or, trade*].

4. The said *A.B.* is willing to take the said infant as an articted clerk [*or, apprentice*] in his said profession [*or, trade*] for a term of years, on being paid a premium of \$.

5. I have made inquiries of various persons engaged in the said profession [*or, trade*] of ; and am informed by them, and believe, that the said premium of \$ is a reasonable and proper sum to be paid to a person in the position of the said *A.B.*

6. The said infant will require an outfit on his being articted [*or, apprenticed*]; and, from inquiries I have made on the subject, I believe the sum of \$ will be a necessary and proper sum to be allowed for such outfit.

SECTION VIII.—MARRIAGE AND MARRIAGE SETTLEMENTS OF WARDS OF COURT.

(*Style of matter: see 1358, or other style of the cause or matter in which the infant is a ward of Court.*)

(*Formal parts: see No. 1324.*)

1376

Petition to
interdict mar-
riage of ward
of Court.

The humble petition of *A.B.*, of (*residence and addition*),
the guardian of the above named plaintiff *C.D.*, an
infant (*or as may be*).

Sheweth as follows:

1. *Shew how infant has become a ward of Court; as thus:*
This action has been instituted by the said plaintiff *C.D.*, by

E.F., her next friend, for the purpose of having the estate of *G.D.*, deceased, the father of the said *C.D.*, administered under the direction of this Honourable Court. The said *C.D.* is, under the will of the said *G.D.*, entitled to one-fourth of the clear residue of his personal estate, which is of considerable value.

2. *Shew present age of infant; as thus:* The said *C.D.* is now of the age of years: having been born on the day of , 19 .

3. *Shew appointment of guardian, if any; as thus:* By an order made in this cause (*or as may be*), dated the day of , 19 , your petitioner was appointed the guardian of the said *C.D.* during her minority, or until further order.

4. *Shew the grounds for the belief that a clandestine marriage is in contemplation; and with whom; and, if so, that the intended wife, or husband, is not a fit person, or other reason for interdicting the intended marriage.*

Your petitioner therefore humbly prays, that the said *X.Y.* and *C.D.* (*intended husband and wife*) may be restrained from intermarrying; and from having any interview, intercourse, or communication with each other, in any manner whatsoever.

(*Formal parts: see No. 403.*)

on the part of the plaintiff (*or as may be*), that *A.B.*, of (*residence and addition*), may be committed to prison for a contempt of this Honourable Court in having married the infant defendant *E.F.* without the leave of the said Court.

1377

Notice of motion to commit husband, for marrying ward without consent.

(*Formal parts: see No. 403.*)

on the part of *A.B.*, the guardian of the above named infant *C.D.* (*or as may be*), that an inquiry may be made whether the said infant *C.D.* has contracted a valid marriage with *F.G.*, of (*residence and addition*), and under what circumstances; and in case a valid marriage has been contracted, that a proper settlement of the fortune of the said infant may be approved by the Court.

1378

Notice of motion for inquiry as to validity of marriage of ward.

1379Petition for
the like.*(Proceed as in No. 1376, to end of par. 3.)*

4. *Shew grounds for the belief that a marriage has taken place; with whom, when, and where; and by whose connivance.*

Your petitioner therefore humbly prays, that an inquiry may be made whether the said infant *C.D.* has contracted a valid marriage with the said *F.G.*, and under (*continue as in last Form to the end.*)

(Style of the cause or matter in which the infant is a ward of Court.)

(Formal parts: see No. 1324.)

1380Petition for
leave for a
ward of Court
to marry.

The humble petition of the above named infant *E.F.*, by *G.H.*, of (*residence and addition*), her testamentary guardian (*or as may be*),

Sheweth as follows:

1—3. *Shew how the infant has become a ward of Court—the infant's age—and the appointment of a guardian, if any: as in No. 1376.*

4. *Shew, concisely, the state of the infant's fortune; and how invested.*

5. *J.K.*, of (*residence and addition*), has made proposals of marriage to your petitioner: which proposals she has, with the sanction and approval of her said guardian *G.H.*, accepted, subject to the approbation of this Honourable Court.

6. *State, shortly, the age, rank, position in life, and fortune of the proposed husband.*

Your petitioner therefore humbly prays that an inquiry may be made whether the said proposed marriage is a fit and proper marriage for your petitioner; and if so, that your petitioner and the said *J.K.* may be at liberty to lay proposals before a Judge in Chambers for a settlement on such marriage; and that a proper settlement of the property of your petitioner may be approved, and be executed by all necessary parties; and that, upon the due execution thereof, your petitioner and the said *J.K.* may be at liberty to intermarry.

Add direction as to taxation and payment of costs.

(*Formal parts: see No. 403.*)

on the part of the above named infant *E.F.*, by *G.H.*, her testamentary guardian (*or as may be*):

1381
Notice of motion for leave for a ward of Court to marry.

1. That the applicant may be at liberty to accept proposals of marriage made to her by *J.K.*, of (*residence and addition*).

2. That a proper settlement prior to such marriage may be settled and approved by a Judge.

3. That upon the execution of such settlement by all necessary parties, the applicant and the said *J.K.* may be at liberty to intermarry.

4. *Add direction as to taxation and payment of costs.*

(*Short title.*)

The proposals of the infant *E.F.*, and of *J.K.*, for a settlement to be executed on their marriage.

1382
Proposals for a settlement.

The property of the said *E.F.* consists of (*state what*).

The property proposed to be settled by the said *J.K.* consists of (*state what*.)

The trustees proposed on behalf of the said *E.F.* are, *A.B.*, of (*residence and addition*); and *C.D.*, of, &c.

The trustees proposed on behalf of the said *J.K.* are, *B.C.*, of, &c., and *X.Y.*, of, &c.

It is proposed to vest the whole of the fortune of the said *E.F.* in the said four trustees upon the following trusts (*state the same shortly; as thus*:

Upon trust for the said *E.F.* till the marriage; and after the marriage.

Upon trust to pay the income to the said *E.F.*, for her separate use, but without power of anticipation, during the joint lives of the said *E.F.* and *J.K.*; and after the decease of either, to pay the income to the survivor for life.

After the death of the survivor, the corpus to be held in trust for the children or remoter issue of the marriage, as the said *E.F.* and *J.K.* shall jointly by deed,

and, in default, as the survivor shall by deed or will, appoint; and subject to any such appointment, in trust for the children of the marriage equally: to vest in sons at twenty-one, and in daughters at twenty-one or marriage.

In default of issue, the corpus to be held in trust for the said *E.F.*, if she survives the said *J.K.*; and if not, then in trust for her testamentary appointees, or statutory next of kin, as if she had never been married.]

Power to be reserved to the said *E.F.*, if she survives the said *J.K.*, to make a settlement, out of her fortune, on a subsequent marriage: to the extent of one-half, if but one child of the present marriage; and of one-third, if two or more such children. The settlement to contain an agreement to settle any other or future property of the said *E.F.*, amounting, at any one time at the time of the acquisition thereof in possession, to \$, except plate, jewels and similar articles: which excepted articles are to be held for her separate use.

Set out, in like manner, the proposed trusts of the property to be settled by the husband.

The settlement also to contain all such provisions as to maintenance, advancement, hotchpot, investment and transposition, appointment of new trustees and reimbursement, as the Judge may approve.

(Formal parts: see No. 902 or 908.)

1383

Order approving marriage of ward, and settling fund, without deed.

1. And this Court being of opinion that the proposed marriage between the said *A.B.* and the said infant *C.D.* is a fit and proper marriage for the said infant; and it appearing that the property to which the said infant is entitled consists of \$, standing in the name of the Accountant of the Supreme Court, to the credit of this cause; and the Court having approved the settlement hereinafter contained as a proper settlement to be made of the said property upon or in contemplation of the said marriage, doth sanction and approve the same; and doth order that the costs of the infant

of this application and incident thereto be taxed as between solicitor and client; and that, upon the production of a certificate of the solemnization of the marriage, the said costs be paid to Mr. *E.F.*, the applicant's solicitor, and the sum of \$200 to *G.H.*, the guardian of the said infant, for the outfit of the said infant; he undertaking duly to apply the same; and that the residue of the said \$ be carried over in trust in this cause, "The account of the settlement of *C.*, the wife of *A.B.*, and her children;" and be thenceforth held upon the following trusts; namely: upon trust for the said *C.D.* for her life, and, during any coverture, for her separate use without power of anticipation. And after her decease, in case the said *A.B.* shall survive her, upon trust for him for his life. And after the decease of the survivor of them, upon trust for all, or any one or more, exclusively of the other or others, of the children of the said *C.D.*, by her said intended or any future marriage, as she shall, by deed or will, appoint; and in default of such appointment, and in so far as no such appointment shall extend, in trust for all the children, or the child, of the said intended marriage, who being sons or a son shall attain the age of twenty-one years, or, being daughters or a daughter, shall attain that age or marry under that age; and if more than one, in equal shares. And in case there shall be no such child who, being a son, shall attain the said age, or, being a daughter, shall attain that age or be married, then, in case the said *C.D.* shall die under coverture, in trust for such person or persons as she shall by her last will appoint; and in default of such appointment, in trust for the next of kin of the said *C.D.*, according to the Statute of Distribution, as if she had never been married; but in case she shall survive her present or any future husband, then in trust for the said *C.D.*, her executors, administrators and assigns. And any of the said children who shall take appointed shares, shall bring such appointed shares into hotchpot, with their brothers and sisters, taking in default of appointment.

2. And this Court doth further order that, after the said intended marriage, the interest to accrue on the moneys ordered to be carried over as aforesaid be from time to time, as the same shall accrue, paid to the said *C.D.*, on her separate receipt, during her life, or until further order. (*a*)

(*a*) Where the trust fund is to be vested in trustees, the order should direct the payment out of the fund to the trustees upon the celebration of the marriage.

SECTION IX.—TRUSTEES.

(1) *Motions on behalf of Trustees as to Management of Trust Estate.*

In the High Court of Justice.

In the matter of the trusts of the will of *A.B.* (*or style of any action or matter in which the trusts are being administered*).

1384

Notice of motion for leave to bring an action.

(*Formal parts: see No. 403.*)

on the part of the plaintiffs [*or, defendants, A.B. and C.D.: or as may be*], the trustees [*or, executors*] of the will of *E.F.*; the testator [*or, the administrators of E.F., the intestate*] in the pleadings named (*or as may be*).

1. That they may be at liberty to institute and prosecute an action [*or, to take proceedings in the proper County Court*] against all proper parties, for the purpose of [*state, shortly, the object; as thus: compelling a foreclosure or sale of the hereditaments comprised in the mortgage security for \$500 (or, recovering a debt of \$500 due) from G.H., and now forming part of the outstanding estate of the said E.F.*]

That the applicants may be indemnified, in such manner as the Court shall direct, against any costs to be incurred by them in such action [*or, proceedings*], out of the estate of the said *E.F.* And take notice (*&c., as in No. 403*) .

1385

Notice of motion for leave to defend an action.

(*Formal parts: see No. 1384.*)

1. That they may be at liberty to defend the action commenced against them in this Court by *A.B. and C.D.*, the executors of *L.M.* (*or as may be*), for the purpose of [*state, shortly, what; as thus: compelling a foreclosure or sale of the hereditaments comprised in the mortgage security for \$500 to the said L.M.: the equity of redemption whereof forms part of the estate of the said E.F.*]; and the short title of which suit is "*Brown v. Jones.*"

2. That the applicants may be indemnified (*Conclude as in No. 1384.*)

1386

Another form.

(*Formal parts: see No. 1384.*)

1. That they may be at liberty to defend the action commenced against them by *O.P.*, in this Honourable Court [*or, in the County Court of , or as may be*], to recover the

sum of \$500 alleged to be due to him from the estate of the said *E.F.* [*or as may be*].

2. That the applicants may be indemnified (*Conclude as in No. 1384*).

(*Formal parts: see No. 1384.*)

That the applicants may be at liberty to carry on the testator's business of a , at , until the sale thereof, or until the day of next, and to use and employ for that purpose any part of the sum of \$ now in their hands, and forming part of the testator's personal estate. And take notice (&c., *as in No. 403*).

1387

Notice of motion for leave to carry on testator's business.

(*Formal parts: see No. 1384.*)

That the applicants may be at liberty out of the assets of the said *E.F.* in their hands, to pay the debts of the said *E.F.* specified in the Schedule to the Master's report, dated the , 19 [*or, in the exhibit marked A. to the affidavit of the applicants filed , 19 , or as may be*]. And take notice (&c., *as in No. 382*).

1388

Notice of motion for leave to pay debts.

(*Formal parts: see No. 1384.*)

That the applicants may be at liberty to compromise the action of "*Brown v. Jones*," instituted by [*or, against*] them, in this Honourable Court (*or as may be*) against [*or, by (state whom)*], for (*state, shortly, the object of the suit, or action*)—*or, the debt due by [or, to] G.H. to [or, from] the estate of the said E.F.—upon the terms following, namely (state them)*. And take notice (&c., *as in No. 403*).

1389

Notice of motion for leave to compromise an action, or claim.

(*Formal parts: see No. 1384.*)

That the applicants may be at liberty to lay out sums of money not exceeding the respective sums set forth in the second column of the Schedule hereto, in effecting the repairs [*or, works of drainage*] and improvements specified in the

1390

Notice of motion for leave to execute repairs, or drainage works.

affidavit of *A.B.*, filed the , 19 , and in the exhibits thereto, to those portions of the estates of the testator *E.F.*, situate at , in the County of , which are now in the occupation of the respective persons whose names are set forth in the first column of the said Schedule; and may be allowed what they shall so lay out on passing their accounts in this cause.

The Schedule above referred to.

Names of Occupiers.	Estimated amount to be laid out.
	\$ cts.
Peter Brice	209·08
John Witham	80·04
Benjamin Scholefield	137·11
	426·23

(*Formal parts: see No. 1384.*)

1391

Notice of motion for leave to obtain a renewal of a lease.

That the applicants may be at liberty to accept from *G.H.* a renewal, for the term of years, from next, at the annual rent of \$, of the lease dated the , 19 , of the farm at B., in the County of C., now forming part of the outstanding estate of the said *E.F.*, such lease to be granted to the applicants as executors of the will of the said *E.F.* And take notice (*&c.*, as in No. 403).

(*Formal parts: see No. 1384.*)

1392

Notice of motion to approve of agreement to grant a lease.

That the conditional contract dated the day of , 19 , entered into by the applicants [*or, by G.H.*, as the agent for, and on behalf of, the applicants—*or as may be*], to grant to *L.M.* a lease of the farm at B., in the County of C. (*or as may be*), part of the trust estate of the testator *E.F.*, on the terms and conditions therein mentioned, may be directed to be carried into effect: such lease to be approved by the Master in Ordinary (*or as may be*). And take notice (*&c.* as in No. 403).

(*Formal parts: see No. 744.*)

1393

We, *G.H.*, of (*residence and addition*), and *J.K.*, of, Affidavit in support
&c., severally make oath and say as follows:

First, I, the said *G.H.*, for myself, say as follows:

1. I have, for years last past, carried on the business of a surveyor, auctioneer, and land and estate agent at , in the County of ; and I am well acquainted with the value, management, and letting of land and house property, in the neighbourhood of the farm hereinafter mentioned.

2. I am well acquainted with the farm and premises described or referred to in the agreement dated the day of , 19 , made between (*describe the parties*), and now produced and shewn to me, and marked A.

3. I was recently employed by the plaintiffs (*or as may be*) to obtain a tenant for the said farm and premises, and to negotiate the letting thereof.

4. Having well considered the value of the said farm and premises, I am of opinion that the rent of \$, in the said agreement mentioned, is the best rent that can reasonably be obtained for the said premises; and that the terms and conditions of the said agreement in other respects [*if a draft lease has also been approved, add: and of the draft lease referred to in the said agreement, and now also produced and shewn to me, and marked B.*], are fair and reasonable, and such as are usually inserted in leases of property of the same nature; and in my judgment and opinion it will be beneficial to the estate of the testator *E.F.* (*or as may be*) that the said agreement should be carried into effect.

5. I have made inquiries as to the position and means of the said *L.M.* (*tenant*), and as to his ability to pay the rent and perform the covenants and agreements on his part contained in the said agreement, and to be contained in the lease to be granted in pursuance thereof. From information derived by me in prosecuting such inquiries, I am of opinion that the said *L.M.* is fully able to pay the said rent and perform the said covenants and agreements; and that he is in all respects a desirable tenant for the said premises.

6. And I, the said *J.K.*, for myself say, that the signature "," set and subscribed to the agreement dated the day of , 19 , now produced and shewn to me, and marked A., is of the proper writing of the said *L.M.*, one of the parties thereto: as I know from having seen him subscribe such signature thereto.

(2) *Motions for the Appointment of New Trustees.*

(Formal parts: see No. 744.)

1394Affidavit of
eligibility of
proposed
trustees.

1. *Shew deponent's personal knowledge of the proposed trustees; as thus:* I have for years last past, known, and been well acquainted with *E.F.*, of (*residence and addition*), and *G.H.*, of (*residence and addition*), the persons proposed to be appointed new trustees of the will of *A.B.*, late of (*residence and addition*), deceased, the testator in the judgment [*or, order*] in this cause [*or, matter*] dated the day of , 19 , named [*or, of the indenture of settlement, dated the day of , 19 , made on the marriage of A.B. with C.D., in the judgment, &c., mentioned—or as may be.*]

2. *Shew the position in life of the proposed trustees, and their eligibility; as thus:* The said *E.F.* has, for years last past, carried on business as a banker at , in the of . The said *G.H.* has, for years last past, carried on business as a wine-merchant at , in the of . During my aforesaid acquaintance with them I have had many opportunities of forming an opinion as to their habits of business and integrity. The said *E.F.* and *G.H.* respectively are persons in good credit in the neighbourhood in which they respectively carry on business as aforesaid, and are both men of business habits, and of strict honour and integrity.

3. In my judgment and opinion the said *E.F.* and *G.H.* are fit, proper, and eligible persons to be appointed new trustees of the said will [*or, indenture of settlement—or as may be.*]

(Short title.)

1395Consent to
act of pro-
posed trus-
tees.

We, the undersigned *E.F.*, of (*residence and addition*), and *G.H.*, of (*residence and addition*), do hereby testify our consent to accept the office of trustees, and to act in the trusts, of the will of *A.B.*, late of (*&c., as in No. 1394*): in case the High Court of Justice for Ontario shall think fit to appoint us to that office. Dated this day of , 19 .

Signed by the said *E.F.*
and *G.H.* in the presence of }
J.K.

E.F.
G.H.

(Formal parts: see No. 744.)

1. The signatures “ ,” and “ ,” respectively set and subscribed to the paper writing marked A, hereunto annexed [or, now produced and shewn to me], purporting to be the consent, dated the day of , 19 , of *E.F.* and *G.H.*, to accept the office of trustees of the will of *A.B.* (or as may be), are of the respective proper handwriting of the said *E.F.* and *G.H.*, in such paper writing respectively named and described; as I know from having seen them respectively sign the said paper writing.

1396

Affidavit, verifying the signatures thereto.

(3) APPLICATIONS BY TRUSTEES TO PAY TRUST FUND INTO COURT.

In the High Court of Justice.

In the matter of the trusts of [the last will and testament and codicil thereto of *A.W.*, deceased] (*b*).

1397

Affidavit by trustees for leave to pay trust fund into Court. (*a*)

(Formal parts: see No. 744.)

1. *A.W.*, late of the City of Toronto, in the County of York, and Province of Ontario, widow, deceased, duly made and published her last will and testament, bearing date the day of , 19 , and on the day of , 19 , duly made and published a codicil to the said will, and by the said will and codicil thereto appointed your petitioners executors thereof.

(*a*) See R. S. O. 1897 c. 336, ss. 4 and 30. The petition formerly customary seems to be now unnecessary.

(*b*) See R. S. O. 1897 c. 336, s. 30 (1). It is customary in England to refer to the Acts under which applications are made to the Court under its statutory jurisdiction, in the heading of the proceedings, but in this country, where the whole jurisdiction of the Court is statutory, it would seem to be an unnecessary although a convenient practice. In England no order is necessary to authorize the trustee to pay a trust fund into Court; *Re Bigg*, 11 Beav. 27.—In Ontario, however, it is necessary to apply on in Chambers for an order: see R. S. O. 1897 c. 336, ss. 4 and 30. A trustee paying a trust fund into Court without any sufficient reason may have to pay the costs occasioned by his so doing.

2. The said A.W. departed this life on the day of , 19 , without having in any way revoked the said will or codicil.

3. On the day of , 19 , the said will and codicil were duly proved in the Surrogate Court of , and letters probate thereof granted to me, which said letters are now shewn to me and marked A.

4. By the said will the said testatrix gave and bequeathed to [*recite material part of will relating to the trust fund in question; as thus, M.D., amongst others, a legacy of \$450, and by her said codicil she gave and bequeathed to N.C. a legacy of \$500*].

5. (*State whether estate or succession duty is chargeable, and if it or any part thereof is paid: see No. 1398, par. 3.*)

6. [*Set out reason for claiming benefit of the Act; as thus: The said M.D. and N.C. are both infants under the age of twenty-one years, the said M.D. being now of the age of years, and the said N.C. of the age of years. State their addresses.*]

7. We submit to answer all inquiries and to obey all orders which may be made by this Honourable Court in respect of the said two several sums of money.

8. (*State place where deponent is to be served with any proceedings, e.g., Any petition, notice, or other proceeding relating to the summons may be served on me at (state address).*)

1398

Another form of affidavit of trustee for leave to pay trust fund, &c., into Court, under R.S.O. c. 336.

In the High Court of Justice.

In the matter of (*specify shortly the trust and the instrument creating it, e.g.*), the Trusts of the will of John Jones, deceased (a).

I (*deponent's name, address and occupation in full. See Form 744.*)

1. I am the trustee named in the [*set out document creating trust, e.g., the will of John Jones, late of the City of Toronto, Brewer, deceased, which said will bears date the day of , and the letters probate thereof granted by the Surrogate Court of the County of York are now shewn to me and marked A.*]

2. Under the trusts declared in the said [will] for the benefit of _____, I have in my possession the sum of _____, and also the various securities for money specified in the schedule hereto annexed and marked B., to which the said _____ are entitled in equal shares (*or as may be*).

3. The sum of _____ was payable out of the said estate of the said John Jones for succession duty to the Honourable the Provincial Treasurer, and the same has been fully paid and satisfied as appears by the receipt of the Honourable the Provincial Treasurer now produced and shewn to me and marked C. [*or*, The total value of the estate of the said John Jones was only _____ dollars, and no succession duty was payable in respect thereof, *or as may be*].

4. The addresses of the several persons entitled to the moneys and securities referred to in the third paragraph of the affidavit so far as the same are known to me are as follows:

Alfred Jones, No. 14 President Street, Washington, District of Columbia, U.S.A.

Mary Tonkins, No. 13 Centre Avenue, City of Toronto, Ontario.

I do not know what is the address of the above named Arthur Thompson.

5. The said Alfred Jones is a lunatic not so found, and the said Mary Tonkins and Arthur Thompson are infants under the age of twenty-one years, the said Mary Tonkins is of the age of five years, the said Arthur Thompson is of the age of twenty years or thereabouts [*or* The said _____

are respectively of the full age of twenty-one years and upwards, and to the best of my knowledge and belief of sound mind and under no disability].

6. I submit to answer all such questions relating to the application of the said moneys and securities as this Honourable Court or any Judge thereof may make or direct.

7. That the following is the place where I may be served with any petition, notice, or other proceeding relating to the moneys and securities aforesaid, viz.:

“55 Russell Street, Toronto, Ontario.”

8. Owing to the lunacy and infancy of the parties entitled to the said moneys and securities, I desire to be relieved of the trust in respect of the moneys and securities aforesaid (*or as may be*).

1399

Affidavit by
mortgagee to
obtain leave to
pay surplus
after sale into
Court.

In the High Court of Justice.

In the matter of a certain mortgage, dated the day
of , 19 , between A.B. as mortgagor and C.D. as
mortgagee.

I, C.D., &c., (*giving deponent's name and address*) (a).

1. Under and by virtue of an indenture of mortgage bearing date the day of , 19 , and made between A.B. of the first part, his wife of the second part to bar dower, and myself of the third part, I am mortgagee of the lands and premises therein mentioned, being (*describe land*).

2. Default having been made in payment of the moneys secured by the said mortgage, I sold the said lands for the sum of \$ in exercise of the power of sale contained in the said mortgage.

3. After deducting from the said sum the amount due to me under the said mortgage for principal, interest and costs, there remains in my hands a surplus of \$.

4. *Shew the circumstances rendering it necessary to pay the money into Court, such as condition of the title to the equity of redemption, absence, infancy or other disability of any of the persons who may be entitled to the surplus for a share therein. State the names and addresses as far as known to the deponent of the persons interested in the surplus.*)

5. I am unable to ascertain the whereabouts of the said and and the proportions in which the various persons entitled to the said surplus are entitled to share therein.

6 and 7. *As in the preceding Form.*

1400

Order on
application.

(*Formal parts: see No. 902.*)

1. It is ordered that the applicants E.H. and the Reverend W.D. be at liberty to pay into Court in this matter, to the credit of M.D., of , spinster, \$, and to the credit of N.C., of , spinster, \$, [*or where the persons entitled are not ascertained to the credit of this matter*], after deducting therefrom the costs of this application and of the payment into Court of the said money, which said costs are hereby fixed at the sum of \$, and the said sum when so paid into Court is to be subject to further order.

(a) See R. S. O. 1897 c. 336, s. 30.

2. And it is further ordered that upon such payment into Court being made the said applicants and the estate of the said A.W. be discharged in respect of said sum[s].

3. [*Where infants are interested in the money.* And it is further ordered that the said applicants do forthwith give notice of the payment of the said moneys into Court pursuant to the Statute in that behalf (b) by prepaid letter through the post to the Official Guardian *ad litem* on behalf of the said infant N.C.]

4. And it is further ordered that a copy of this order be forthwith served upon the said [where infants are interested and the Official Guardian *ad litem*.]

In the High Court of Justice.

In the matter of (*specifying the trust, &c., as in the affidavit, No. 1397*).

Take notice that pursuant to the order of the Court dated the day of , I have paid into Court to the credit of the above mentioned matter \$ [or I have deposited in Court to the credit of the above mentioned matter the following securities (*specifying them*)] in which moneys [or securities] you appear to be interested as (*stating shortly how, e.g., as legatee under the will of A.B.*).

Dated this day of

*Signature of applicant in person
or by his solicitor.*

1401

Notice of order to be served on the persons interested in the fund. (c)

(4) PETITIONS BY TRUSTEES FOR ADVICE.

In the High Court of Justice.

In the matter of the trusts of the will of A.P.,
and

In the matter of The Trustee Act.

To the Honourable the Judges of the High Court of Justice.

The petition of G.T., of the of , Esquire,
Sheweth as follows:

(b) See Next Form.

(c) See R. S. O. 1897 c. 336, s. 30 (4).

(d) Under R. S. O. 1897, c. 129, s. 39. See also Rule 938, under which also it would seem that the application may be made.

1402

Petition by trustee for advice. (d)

1. On the 11th October, 19 , *A.P.*, widow of *G.P.*, late of the of , merchant, then residing in the of , made a will purporting to be her last will and testament, duly executed so as to pass real estates, whereby she gave and devised all the lands and tenements, hereditaments, and real estate situate in the Province of Ontario, of or to which she should at her death be seised or entitled, or of which she should at her death have power to dispose by will unto and to the use of the petitioner *G.T.*, his heirs and assigns. The said *A.P.* also thereby gave and bequeathed all the moneys, securities for money, goods, chattels, credits, and personal estate, situate or being within the said Province, of or to which she should at her death be possessed or entitled, or of which she should at her death have power to dispose by will unto the said petitioner, his executors and administrators, and both the said devise of real estate and bequest of personal estate were upon the trusts, and with, under, and subject to the powers, provisoes, and declarations therein contained of and concerning the same.

2. By her said will the testatrix gave to her son *Charles E.P.* an annuity or yearly sum of \$1,000 during his life, to be paid by equal half-yearly payments to *R.O.*, of aforesaid, for the maintenance and support of her said son; but out of that sum \$100 a year was to be paid by the said *R.O.* to her faithful servant and friend *M.T.* so long as she should remain with her son, and it was her fervent hope and desire that she should remain with him so long as they both should live. The testatrix also gave to her father, *S.T.*, the sum of \$2,500, and to her sister, *M.O.*, wife of the said *R.O.*, the sum of \$2,500, and to her executor, *G.T.*, the now petitioner, the sum of \$2,500, and to the Upper Canada Bible Society the sum of \$2,500, and the testatrix directed that the above mentioned annuity and legacies should be paid by your petitioner out of her real and personal estate in Ontario.

3. The testatrix by her said will gave to your petitioner power to sell the said real estate, and to collect and get in the said personal estate; and, after payment of the annuity and legacies aforesaid, declared that your petitioner should invest the same in the manner therein specified, and pay over yearly unto her daughter *A.*, the wife of *J.A.C.*, of the City of *N.Y.*, for her sole and separate use, independently of her husband, and free from his debts, control, and engagements, the whole residue of the yearly rents, profits, interest, and income of the said trust estate, and after her death in trust as to the

whole of the residue of her real and personal estate in Ontario for the child or children of her said daughter A., then living, and their heirs, and the issue of such as should be dead, and their, his or her heirs, in equal shares, as tenants in common; and in default of child or children of her said daughter A., in trust to pay to her said husband \$2,500; and as to the residue of the trust estate in trust for her late husband's nephews and niece, *C.P.*, *S.P.*, *A.P.*, and *M.P.*, all of *L.*, the children of *C.S.P.*, of *L.*, merchant, and their heirs, in equal shares, as tenants in common.

4. The testatrix by her said will made devises and bequests of her real and personal estate in England and Scotland, and appointed your petitioner and *R.O.* and *C.P.* her executors, and stating her will and desire that your petitioner, his executors, administrators, and assigns, should have the sole management and superintendence of all her affairs, property and business in Ontario, and should prove that will there, and that the other executors should act in the execution of her will in Scotland and England.

5. On the 24th July, 19 , the said testatrix made a codicil to her said will, duly executed so as to pass real estates, whereby, among other things, she revoked the bequest of the said annuity to her son, *C.E.P.*, but so as not to affect the bequest of the yearly sum of \$100 to *M.T.*, which she thereby charged on her real and personal estate in Ontario, and directed to be remitted by your petitioner to *R.O.*, to be by him paid to the said *M.T.*, and she thereby directed that the bequest to the Upper Canada Bible Society should not be paid till after the death of her daughter A., and then only in the event of her dying without issue at the time of her death; but in the event of her leaving issue, then that the amount of the said legacy should go to the issue, together with the provision otherwise made for such issue by her will.

6. On the 19th February, 19 , the said testatrix, then residing at , in Germany, signed a testamentary paper, but not in the presence of witnesses, nor attested in any manner, whereby, so far as her property in Ontario is concerned, she purported to make the following disposition:—"To my husband's nephews, *S.S.P.* and *A.P.*, any property in shares, money or lands I may possess in Ontario at the time of my death, after paying \$2,500 to my beloved friends, *G.* and *M.T.*, of , Ontario, Canada." And she thereby requested *S.* and *A.* to be her trustees, believing that they would carry out her wishes, and below the signature to the said

papèr she wrote, "I annul my former will, now lying in , Ontario, Canada, in the hand of *G.T.*, Esq. My agent in , who had my affairs in charge is *J.S.*, Esq., , Ontario, Canada."

7. The said testatrix died on the 10th January, 19 ; and probate of the said last mentioned testamentary paper was, on the 23rd September, 19 , granted by the Surrogate Court of the County of , to *S.S.P.* and *A.P.*, of the City of , merchants.

8. The testatrix's son *C.E.P.*, her father *Dr. T.P.*, her daughter *A.C.*, her only grandchild, daughter of said *A.C.*, and her son-in-law *J.A.C.*, all predeceased the testatrix.

9. Your petitioner is advised that the testamentary paper, signed at , is effectual as a will of personal property, but is not effectual as a revocation of the will devising the real estate; and the devise of the real estate being upon trust for sale, and thus operating a conversion into personalty, your petitioner is in doubt as to the proper course for him to pursue, and he requests to be advised if his proper course is or is not:—

1. To sell the real estate in Ontario, and pay the charges made thereon by the said will and codicil, so far as the same yet subsist, and divide the residue in the manner pointed out by the will devising the real estate.

2. Or to sell the real estate in Ontario and pay over the proceeds to the executors under the said testatrix's will of her personal estate, to be by them applied as directed therein by the testatrix.

3. Or whether by reason of the revocation of the will made in Ontario as to personalty there should be any, and if any, what, abatement in the legacies thereby bequeathed and charged upon the testatrix's real estate.

Certificate of Counsel.

In my opinion the case above stated is a proper one for the advice of a Judge of the High Court of Justice under the Trustee Act.

W.P.

(5) PROCEEDINGS UNDER "THE TRUSTEE RELIEF ACT." (a)

1403

Petition for a person to convey lands; whereof a trustee died seised without an heir. (b)

In the High Court of Justice.

In the matter of the trusts of an indenture dated 1st November, 19 , made between *R.K.* and *C.W.R.* his wife of the first part, *N.R.*, of the second part, and *S.B.* of the third part.

And in the matter of "The Trustee Relief Act."

(*Formal parts: see No. 1324.*)

1. By the above mentioned indenture dated 1st November, 19 , the fee simple and inheritance of, and in all that certain parcel of land known as (*describing it,*) was conveyed unto, and to the use of the above named *S.B.*, his heirs, and assigns, in trust for *N.R.*, his heirs and assigns.

2. *Statement of the death and intestacy of S.B.; and grant of administration of his personal estate.*

3. The said *S.B.* was illegitimate and never married; and under the circumstances aforesaid died intestate as to trust estates, and without an heir.

4. *Statement of the devise by N.R. of the said lands to the petitioners E.H. and M.H. on trust; his death; probate of his will; and an agreement for the sale by them of the said lands to the co-petitioner C.W.S.*

5. Your petitioners are desirous of carrying into effect the said agreement, but by reason of the said *S.B.* having died intestate as to the said lands, and without an heir, they are unable to do so without the assistance of this Honourable Court.

Your petitioners, therefore, humbly pray:

That your petitioner *E.H.* may be appointed to convey the said lands comprised in, and assured by the said indenture of the 1st November, 19 , for all estate and interest, of the late said *S.B.* therein, unto and to the use of your petitioner *C.W.S.*, or to such uses and in such manner as he shall direct,—or that such other order may be made in the premises as to this Honourable Court shall seem just.

And your petitioners will ever pray.

(a) R. S. O. 1897 c. 336.

(b) *Seemle*, the petition should be presented in Court: see *Re Lash*, 1 Ch. R. 226.

(Formal parts: see Nos. 1324 and 1402.)

1404

Petition for the appointment of new trustees and for vesting order, &c., under Trustee Relief Act, R.S.O. c. 336.
(a)

Sheweth as follows:

1. *Statements shewing a settlement by the will of J.F., of his real and personal estate in trust for the petitioner S.W. for life, with remainder to W.N.W.; and that A.B. and C.D. were the surviving trustees of the will; and a statement of the particulars of the real and personal estate. The petition should also state why it is found difficult, inexpedient or impracticable to appoint the new trustees without the assistance of the Court: see R. S. O. 1897, c. 129, s. 4; and c. 336, s. 21.*

2. The said C.D. has refused to act further in the trusts of the said will, and your petitioners are desirous that some fit and proper persons should be appointed in his stead, and in the stead of the said W.R. (*deceased trustee*); but inasmuch as the said will does not contain any power for the appointment of new trustees thereof, and the said A.B. refuses to act under the powers conferred by section 4 of the R. S. O. 1897, c. 129, it has become necessary to apply to this Honourable Court for that purpose.

6. *J.G.N., of (residence and addition), and W.D., of, &c., are fit and proper persons to be appointed such trustees; and they have respectively consented and agreed to be so appointed trustees under the said will jointly with the said A.B., and to act as such trustees of the said will.*

Your petitioners, therefore, humbly pray as follows:

1. That the said J.G.N. and W.D. may be appointed new trustees of the said will of the said J.F., deceased, in substitution of the said W.R., deceased, and the said C.D., who has refused to act further in the trusts thereof jointly with the said A.B., and that the lands remaining subject to the trusts of the said will may be vested in the said J.G.N. and W.D. jointly with the said A.B. as the trustees of the said will, for the estate by the said will devised to the trustees thereof.

[2. That the right to call for a transfer of, and to transfer the stock subject to the trusts of the will of the said J.F. may be vested in the said A.B., and that he may be directed to transfer the same into the names

(a) This petition must be presented in Court: see *Re Lash*, 1 Ch. R. 226; R. S. O. 1897, c. 336, s. 21.

of the said *A.B.*, *J.G.N.*, and *W.D.*, as such trustees as aforesaid.]

3. That the right to sue for and recover any *choses in action*, subject to the trusts of the said will, or any interest in respect thereof, may be vested in the said *A.B.*, *J.G.N.* and *W.D.*, as such trustees of the said will.

SECTION X.—PROCEEDINGS FOR PRODUCTION OF A CESTUI QUE VIE (*b*).

In the High Court of Justice.

In the matter of an indenture of lease dated 19 , made between *A.B.* of the one part, and *C.D.* of the other part (*or as may be*).

1405
Notice of motion for production of *cestui que vie*.
(c)

And in the matter of the Revised Statutes of Ontario, c. 330.

(*Formal parts: see No. 1324.*)

The petition may be framed from the affidavit No. 1406, the prayer may be as follows: The petitioner therefore prays that *C.D.*, of, &c., may be ordered, on the , 19 , to produce and shew at , in the county of F.: between the hours of eleven in the forenoon, and one in the afternoon (*or as may be*): according to the provisions of the above mentioned Act: to the said *A.B.* [*or, to G.H.*, of, &c., the agent of the said *A.B.*], *L.M.*, *N.O.*, and *P.Q.*, in the above mentioned indenture dated, &c., respectively described, or some or one of them.

(*Formal parts: see No. 744.*)

1. Shew the creation of the life estate; as thus: By an indenture dated the day of , 19 , and made between *A.B.* of the one part, and *C.D.* of the other part: being the indenture mentioned in the title or heading of this

1406
Affidavit in support.

(*b*) R. S. O. 1897, c. 330, ss. 16-19. As to this Act, see Dan. Pr. clxxxii., 1843—1847, 1991; Chambers on Infants, 162; Co. Litt. by Harg. 57d. n. [2]; Hubback, 181; Seton, 521; Woodfall, 9. As to the course, where the tenant for life, or *cestui que vie*, is abroad, or, though alive, cannot be produced, see ss. 17, 19; Dan. Pr. 1845—1846.

(*c*) See R. S. O. 1897, c. 330, s. 16; Dan. Pr. 1843, 1844. For order in like case, see Seton, 521, No. 1.

affidavit: certain lands therein described, situate at W., in the Township of E., in the County of F., were demised by the said A.B. to the said C.D. for and during the lives of L.M., N.O., and P.Q., therein respectively described, and the life of the longest liver of them.

2. *Shew the applicant's title to the reversion; as thus:* By indenture dated the day of , 19 , made between the said A.B. of the one part, and me, the deponent, of the other part, the said A.B. granted and conveyed to me, my heirs and assigns, all the lands comprised in, and demised by, the said indenture of lease, but subject to such lease. I am now entitled to the reversion of the said lands, expectant on the death of the survivor of the said L.M., N.O., and P.Q.

3. *State special ground for the application; as thus:* I have good cause to believe, and do believe, that all of them, the said L.M., N.O., and P.Q., are dead; and that such deaths are concealed by the said C.D., the lessee, and present tenant of the said lands. (*Shew grounds of belief.*)

(*Formal parts: see No. 400.*)

1407

Notice of motion for production of *cestuis que vies* in Court, on default.

on behalf of A.B., in the order, dated, &c., named, that C.D., therein named, may be ordered to produce L.M., N.O., and P.Q., therein also named, at the bar of this Court on the day of , 19 ; and in the event of their not being produced, pursuant to the order to be made on this application, that the said L.M., N.O., and P.Q., may be deemed to be dead. And take notice (&c., as in No. 400).

(*Formal parts: see No. 744.*)

1408

Affidavit in support.

1. *Prove service of the order to produce: see No. 766.*

2. *Prove attendance there, and non-production; as thus:* On the day of , 19 , I personally attended and waited at (*place appointed for production of cestui que vie*), in the county of F., from before the hour of eleven of the clock in the forenoon, till after the hour of one of the clock in the afternoon of that day: being the place and time appointed by the said order of the day of , 19 , for the production by the said C.D. to me of L.M., N.O., and

P.Q., in the said order named, or some or one of them; but the said *C.D.* did not, nor did any person on his behalf, attend at the time and place aforesaid, and produce the said *L.M.*, *N.O.*, and *P.Q.*, or any or either of them; nor have the said *L.M.*, *N.O.*, and *P.Q.*, or any or either of them, been produced to me since the date of the said order.

SECTION XI.—PROCEEDINGS RELATING TO LUNATICS.

In the High Court of Justice.

In the matter of *A.B.*, a supposed lunatic.

To the Honourable the Judges of the High Court of Justice.

The humble petition of *C.B.*, of, &c., and *R.D.*, of, &c., Sheweth:

1. That *A.B.*, formerly of, &c., but now of, &c., now is and has for eleven years past been so deprived of his reason and understanding, that he is rendered altogether unfit and unable to govern himself or to manage his affairs, as by the affidavits filed in support of this petition appears.

2. That the said *A.B.* is entitled to the following lands and premises in fee simple, viz. (*describe lands*), which are of the value of \$, and which have been and now are rented for an aggregate annual rental of \$ [or, the said lands are wholly unproductive] (*or as may be*), and he is also possessed of personal estate consisting of (*shortly describe it*), which is of the aggregate value of \$, and from which an annual income of \$ is derived (*or as may be*).

3. The said *A.B.* is now of the age of years, and has never been married.

4. From the day of until the day of , the said *A.B.* resided with and under the care of , but on or about the said last mentioned day he was removed to the Asylum for the Insane at Toronto, where he has ever since continued to reside, and now is residing (*b*).

(*a*) A petition for a declaration of lunacy must be presented to a Judge in Chambers. Con. Rule 42.

(*b*) Where the lunatic is detained in any public asylum for the insane, or in any gaol which is under the authority of the Provincial Government, the Inspector of Prisons and Public Charities is *ex officio* his committee for certain purposes until another is appointed, and the petition should be served upon him: see R. S. O. 1897, c. 317, ss. 53-65.

1409 ✓

Petition to declare a person a lunatic. (a)

5. Your petitioner *C.B.* is a brother of the said *A.B.*, and your petitioner *R.D.* is a son of *W.D.*, formerly *W.B.*, now deceased, who was a sister of the said *A.B.*, and the said *A.B.* has no other relatives resident in this Province.

6. Your petitioners submit that it is necessary and for the interest of the said *A.B.* that some fit and proper person should be appointed committee of the person and estate of the said *A.B.*

Your petitioners therefore pray:

1. That the said *A.B.* may be declared to be a lunatic.

2. That some fit and proper person may be appointed committee of the person and estate of the said *A.B.*

3. That your petitioners may be paid their costs of this matter out of the estate of the said *A.B.*

4. That all proper directions may be given, and that your petitioners may have such further and other relief as may seem just.

And your petitioners will ever pray, &c.

1410

Petition by creditors to declare a person a lunatic, and for appointment of committee.

(*Formal parts: see No. 1409.*)

1. That the said *A.B.* (*the supposed lunatic*), for several years last past carried on the business of a merchant in the Town of

2. In the course of his dealings he became indebted unto your petitioner *C.D.* in the sum of \$, and to your petitioner *E.F.* in the sum of \$

3. The said *A.B.* hath of late become so deranged in his mind as to be totally incapable of managing his affairs, as by the affidavits filed in support of this petition appears; and his friends, to ensure his safety as well as that of others, have been under the necessity of putting him in a place of confinement, and have incurred considerable expenses in having proper care taken of his person, and as far as in them lies of his property.

4. That the affairs and concerns of the said *AB.* must necessarily be entirely ruined, and all his adventures and engagements rendered unproductive of any benefit to himself

or your petitioners, or others his creditors, unless some person or persons properly qualified be legally appointed to manage and conduct and superintend them.

5. That the family and relatives of the said *A.B.* live in England, and none of them live or reside in the Province of Ontario.

6. That some of the creditors of the said *A.B.*, since his lunacy, have commenced legal proceedings against the said *A.B.*, and are endeavouring to obtain priority in payment of their debts.

1. Your petitioners, therefore, as well on behalf of themselves as of others the creditors of the said *A.B.*, pray that the said *A.B.* may be declared to be a lunatic.

2. That some fit and proper person may be appointed committee of the person and estate of the said *A.B.*

3. That the claims of your petitioners and of the other creditors of the said *A.B.* may be ascertained, and that proper provision may be made for payment of the same out of the estate of the said *A.B.*

4. That your petitioners may be paid their costs of this matter out of the estate of the said *A.B.*

5. That all proper directions may be given, and that your petitioners may have such further and other relief as may seem just.

And your petitioners will ever pray, &c.

In the High Court of Justice.

In the matter of *A.B.*, a supposed lunatic.

I, *C.D.*, of the City of _____, doctor of medicine, physician to the Asylum for the Insane at Toronto, make oath and say:

1. I have since the year 19____, been in the habit of attending on the above named *A.B.*, formerly of _____, who has been ever since the said year and now is a patient residing in the said Asylum.

2. I have always considered him a person of weak intellect and erroneous judgment, incapable of conducting his own affairs, and if at liberty, liable to offend public decorum.

1411

Affidavit in support of petition for declaration of lunacy.

3. The said *A.B.* has a high opinion of himself as an author, and sets great value upon two manuscripts of his, one of which is a life of the Reverend *J.W.*, transcribed by himself from the printed work; the other, which he calls an original work, on things natural and spiritual, consists also of a considerable number of detached sentences transcribed from books which have accidentally fallen in his way.

4. He asserts, &c. (*set out specifically other instances of mental aberration*).

5. He has likewise many other aberrations of intellect, which are somewhat difficult to describe, but are sufficiently marked in his conduct, and which leave no doubt in my mind that the said *A.B.* is a lunatic, and wholly unfit for the government of himself and his affairs.

6. That I saw the said *A.B.* at the said Asylum on the day of instant, and found that he was still subject to the mental hallucinations which I have hereinbefore described, and I am of opinion that his lunacy is incurable.

(*Formal parts: see Nos. 1411 and 744.*)

✓ **1412**

Another form.

I, *E.F.*, of, &c., doctor of medicine, make oath and say:

1. On the day of instant, I did, at the request of, &c., visit the above named *A.B.* at the house of , situate, &c., for the purpose of ascertaining the state of mind of the said *A.B.*

2. That I then and there examined the said *A.B.*, and from my examination I am decidedly of opinion that the said *A.B.* is of unsound mind, and wholly incapable of the management of himself or his affairs, or of the care of property.

3. I further say that I formed such opinion as well from [*here give specific instances of mental aberration, within the deponent's knowledge, e.g., the said A.B.'s extreme defect of memory and understanding evident to me, and his want of all power of continued attention, as also from the said A.B.'s eagerly addressing himself to all appearance in whispers to some painted figures and portraits hung in the room, and I say that the said A.B.'s manner in so doing was, in my judgment, very different from mere eccentricity of character, and altogether inconsistent with rationality or soundness of understanding.*]

(*Formal parts: see Nos. 1411 and 744.*)

1413

Another form.

1. I have for twelve years last past been well acquainted and in habits of intimacy with the above named *A.B.*, and during that period have been his medical attendant, and have often attended him in that capacity, and in that capacity I have seen him and conversed with him on the day of
and day of .

2. I lately observed that although the general bodily health of the said *A.B.* continues good, yet that his mental faculties are very obviously impaired, and that such mental imbecility has more particularly increased during the last ten weeks, as was apparent from the incoherency of his common conversation with me on the day of , and from his signing an instrument which I presented to him relating to his property and affairs, which no person in his proper senses would consent to do.

3. The said *A.B.* is of years of age, or thereabout, and I am satisfied that he will not recover his former mental faculties, and he is now entirely incapacitated, by reason of his mental imbecility, for taking care of himself or his property.

(*Formal parts: see Nos. 1411 and 744.*)

1414

Another form.

1. The said *A.B.* is in so imbecile a state of mind as to be totally inattentive to the natural evacuations from his body, and is entirely incapable of assisting himself in those respects or in dressing himself, or being useful to himself in any way whatever.

2. He conceives and declares poison to be mixed with all his food and medicine, which he therefore constantly refuses to take; and he is constantly talking in appearance to himself or to some invisible being, and often gives orders aloud, as if commanding an army or a fleet, in a way and utterance unconnected and unintelligible.

3. I further say that, from these circumstances, and from the said *A.B.*'s want of power to confine or give his attention to any rational subject, and his whole demeanour generally, I am convinced that the said *A.B.* is and has been, during the last eighteen months, during all which time I have been in the habit of seeing and conversing with him constantly, of

unsound mind and understanding, and altogether unfit for and incapable of the management of himself and his estate and affairs.

1415

Affidavit by relative residing with lunatic, as to his lunacy, and as to his property, &c.

(*Formal parts: see Nos. 1411 and 744.*)

1. That the above named *A.B.*, is the only brother of my late mother, *M.C.*, deceased, who was his only sister.

2. That the said *A.B.* is a bachelor, and I and my sisters *B.C.* and *M.C.*, spinsters, are the only children of the said *M.C.*, and the only next of kin of the said *A.B.*, both the father and mother of the said *A.B.* have been dead many years past.

3. I have for several years past been acquainted and conversant with the whole of the estates and property of my uncle the said *A.B.*, and in the Schedule to this my affidavit, I have set forth an account thereof, and of the persons who occupy the same, the rents whereof according to my computation, which I believe to be correct, amount in the whole to the annual sum of \$ subject to deductions for taxes.

4. I further say that the said *A.B.* is also-entitled to (*here specify the personal property shortly*) which is I believe of the aggregate value of \$, and from which an annual income of \$ is derived.

5. I have resided with my uncle the said *A.B.*, for the last nine months, and I have lately applied to the tenants of his real estates for payment of their rents, but they have refused alleging that by reason of the state of mind of the said *A.B.*, they cannot be compelled to pay their rents to any person, nor can they be turned out of possession of the property.

6. I am unable to maintain the said *A.B.* without being paid some portion of the annual income due and owing to the said *A.B.*

7. I am willing to act as the committee of the person and estate of the said *A.B.* in case this Honourable Court shall see fit to appoint me.

In the High Court of Justice.

day, the day of 19 .

(*Style of matter: see No. 1409.*)

Whereas a petition has been presented to this Court on behalf of *E.A.* and others, praying, among other things, that the above named may be declared a lunatic. And whereas the hearing of the said petition has been adjourned, before me the Hon. a Justice of the High Court of Justice (*or as may be*), until to-morrow the day of next at Osgoode Hall in the City of Toronto, and it is expedient that the said should be enabled to be present at the hearing of the petition and the examination of witnesses then to take place, if he can do so without injury to himself or others, and whereas it has been made to appear to me that the said is now an inmate of the Asylum for the Insane at and in the custody of you as superintendent of the said Asylum. These are therefore to will and require you to produce the said before me at Osgoode Hall in the City of Toronto on Friday the day of next, at the hour of 11 o'clock in the forenoon, there to be examined touching the matter of the said petition, and to be present at the hearing thereof, provided the said can be so produced without injury to himself or others, and you are to give him notice accordingly.

(*Signature of Judge.*)

To Medical Superintendent of the Asylum for the Insane at

(*Formal parts: see Nos. 1411 and 744.*)

1. I am well acquainted with *C.B.*, of &c., , and have been so for years past.

2. The said *C.B.* is a person of good character and of steady, sober and industrious habits, and bears the character of being and is in fact as I verily believe, an upright honourable man.

(a) Affidavits of this kind should be framed with regard to the duties the proposed committee will be called on to perform, and as far as practicable should be made by persons of known standing and respectability.

1416

Judge's warrant to Superintendent of Asylum to produce lunatic in Court.

1417

Affidavit of fitness of proposed committee. (a)

3. The said *C.B.* is shrewd and capable in the transaction of business, and I believe he is in every way a fit and proper person to have the care and management of the person and property of the above named *A.B.*

4. The said *C.B.* is accustomed to the management of a farm and I believe if the management of the said *A.B.*'s farm is committed to him he will work it to the best advantage for the said *A.B.*

1418

Consent of
proposed com-
mittee.

In the High Court of Justice.

In the matter of *A.B.* a supposed lunatic.

I, *C.B.* of &c., , am willing and do hereby consent to act as the committee of the person and estate (*or as may be*) of the above named *A.B.*, if this Honourable Court shall see fit to appoint me.

Dated, &c.

(*Signature.*)

Witness.

To be verified by affidavit.

1419

Certificate of
judge to be
indorsed on
petition.

I declare the within named *A.B.* to be a lunatic.

Dated, &c.

X.Y.
J...

1420

Order declar-
ing lunacy and
appointing
committee.

In the High Court of Justice.

(*Date.*)

The Hon. Mr. Justice

In Chambers.

In the matter of *A.B.*, a lunatic.

Upon the petition of *C.D.* of &c. , presented this day, and upon hearing read the said petition and the affidavits of, &c., and upon hearing what was alleged by the solicitor for the said petitioner.

1. It is hereby declared that the said *A.B.* is a lunatic.

2. And it is ordered that *C.D.*, of &c., , be and he is hereby appointed committee of the person [and estate] of the said *A.B.*, he first giving security to the satisfaction of the [Local Master of the Supreme Court at] in the sum of \$, before he shall in anywise intermeddle with the estate of the said lunatic, [or, that it be referred to the Local Master of the Supreme Court at , to appoint some fit and proper person or persons, to be committee of the person [and estate] of the said *A.B.*, such committee first giving security, &c., *as above.*]

3. And it is further ordered that the said committee [when appointed] do once in each year or oftener if required, make a just and true account before the said Master, of his dealings with the said estate, and do also, from time to time, pay into Court to the credit of this matter, subject to further order, the balances which may be found to be in his hands upon the footing of such accounts.

4. And it is further ordered that the said committee do propound and report a scheme for the management of the estate of the said lunatic and for the maintenance of the said lunatic [and his family].

5. And it is further ordered that the costs of the said petitioner in this matter be taxed as between solicitor and client, and paid out of the estate of the said lunatic.

1421

Know all men by these presents, that we, *C.B.*, of &c., *E.F.*, of, &c., and *G.H.*, of, &c., are jointly and severally held and firmly bound unto the Accountant of the Supreme Court of Judicature for Ontario, his successors in office (*b*) and assigns in the penal sum of \$ (*double the amount of the personal estate and of the annual rents and profits of the real estate*), to be paid to the said Accountant, his successors in office or assigns, or his or their certain attorney or attorneys, for which payment well and truly to be made, we, and each of us by himself, do bind ourselves, our and each of our heirs, executors and administrators firmly by these presents, sealed with our seals and dated this day of, &c.

(a) To be filed in the office of the Accountant of the Supreme Court: see R. S. O. 1897 c. 65, s. 10 (4).

(b) See R. S. O. 1897 c. 51, s. 159, and c. 65, s. 10 (4), and Rule 66.

Bond by committee of estate of lunatic. (a)

Whereas, by an order made by the High Court of Justice for Ontario, dated the day of, &c., and made "In the matter of *A.B.*, a lunatic," it is declared that the said *A.B.* is a lunatic, and it is by the said order referred to the Local Master of the Supreme Court of Judicature at , to appoint some fit and proper person committee of the person and estate of the said *A.B.*, upon such person giving security to the satisfaction of the said Master before he should intermeddle with the estate of the said *A.B.* (*Where the order declaring the lunacy also appoints the committee this recital must be varied accordingly.*) And whereas the said Master hath approved of the above bounden *E.F.* and *G.H.* as sureties for the said *C.B.*, and hath also approved of the above written obligation, with the underwritten condition as a proper security to be entered into by the said *C.B.*, *E.F.* and *G.H.*, pursuant to the said order, and the Statute in that behalf, and in testimony thereof hath signed an allowance in the margin hereof.

Now, the condition of the above-written obligation is such that if the above bounden *C.B.* do and shall once in each year, or oftener if thereunto required by the said Court, duly account for all and every the sum and sums of money which he shall receive on account of the rents and profits of the real estate, and in respect of the personal estate of the said *A.B.*, and do and shall truly pay the balances which shall from time to time be certified to be due from him at such times as may be directed, and do within six months after his appointment as such committee, file in the office of the said Master (*or of such officer as may be appointed for that purpose*) (a) a true inventory, verified by the oath of the said *C.B.*, of the whole real and personal estate of the said lunatic, stating the income and profits thereof, and setting forth the debts, credits and effects of the said lunatic, as far as the same shall have come to the knowledge of the said *C.B.*; and in case any property of the said lunatic shall be discovered by the said *C.B.* after the filing of such inventory, if the said *C.B.* shall file in the office of the said Master (*or such officer as may be appointed for that purpose*) (b), a true account of the same, verified by the oath of the said *C.B.*, from time to time, as the same shall be discovered; and if the said *C.B.* shall be careful to see the houses, buildings and structures of the said lunatic to be well and sufficiently repaired, and so kept and maintained so long as he shall be com-

(a) See R. S. O. 1897, c. 65, s. 10 (1).

(b) *Ib.* s. 10 (2).

mittee of the said lunatic's estate, and shall carefully preserve and keep all the deeds, evidences and writings touching the real and personal estate of the said lunatic as now are or hereafter shall come to his hands, custody or possession [and shall provide for the person of the said lunatic and for his safety (c)], and shall not alienate his interest in the custody of the [person and (c)] estate of the said lunatic, and shall in all things observe and perform the orders and directions of the said Court touching or concerning the [person and (c)] estate of the said lunatic, and in all things demean himself as a careful and faithful committee of the [person and (c)] estate of the said lunatic, then the above obligation shall be void, otherwise the same shall be and remain in full force and virtue.

Signed, sealed and delivered }
in presence of }

Allowed.

(Signature of Master.) Allowance in
the margin.

Affidavits proving the due execution of the bond by the obligors, and affidavits of justification by the sureties must accompany. (For Forms, see Nos. 1187, and 1188.)

(Formal parts: as in No. 902.)

1422

of Order superseding lunacy order.

1. Upon the petition of *W.M.* above named, of the _____ day of _____ in the County of _____ presented _____ this day upon hearing read the said petition, and an order made on the _____ day of _____ A.D. 19____, whereby the said *W.M.* was declared a lunatic, and it was referred to the Master of the Supreme Court of Judicature at _____ to appoint a fit and proper person committee of his person and estate, and it appearing that one *A.J.M.* was appointed committee in pursuance of said order and upon hearing read the affidavits of _____ and upon hearing counsel for the petitioner and the said committee *A.J.M.*

2. It is ordered that the said order of the _____ day of _____ A.D. 19____, be and the same is hereby superseded and the

(c) Omit these words where the person appointed committee of the estate is not also committee of the person.

said *W.M.* is hereby restored to the government of himself and his property.

3. And it is further ordered that the said *A.J.M.* do account to the said *W.M.* for his dealings with the estate of the said *W.M.* as committee as aforesaid, and that he do pass his accounts before the said Master to whom the matter is hereby referred for that purpose.

4. And it is further ordered that upon said *A.J.M.* passing his accounts as aforesaid and upon paying to the said *W.M.* what the said Master shall find due by him to the said *W.M.*, the said *A.J.M.* be discharged from his said committee-ship, and the bond given by him as such committee be delivered up for cancellation.

5. And it is further ordered that the costs of the said *A.J.M.* of and incidental to his dealings with the estate of the said *W.M.*, and of this application and the reference hereby directed be taxed as between solicitor and client and paid by the said *W.M.*

CHAPTER XX.

PROCEEDINGS UNDER "THE SETTLED ESTATES ACT." (a)

Title of Petition and other Proceedings. (Rule 673.)

In the High Court of Justice.

1423
Title of petition, &c. (b)

In the matter of the estates settled by *A.B.* [*or A.B. and others*] by will dated [or deed dated] consisting of certain lands or messuages or tenements in the of in the County of

And in the matter of *The Settled Estates Act.*

(*Title as in No. 1423.*)

To the Honourable the Judges of the High Court of Justice: The humble petition of *A.B.* of the in the County of gentleman, and (*give names of petitioners*) humbly sheweth:

1424
Petition under Settled Estates Act, R. S.O. c. 71.

1. One *X.Y.*, late of the in the County of , now deceased, was in his lifetime, and at the time of his death well and equitably seised of an estate in fee simple in possession to his own use of and in all and singular (*describe the property*).

2. The said *X.Y.* departed this life having duly made and published his last will and testament in writing in manner required by law for the passing of real estate, bearing date the day of whereby he devised the said lands in the words and figures following (*give words of devising clause of will*).

3. The petitioner *A.B.* is the *A.B.* mentioned in the said devise and (*give particulars of family, &c.*).

4. The said lands and premises were built upon many years ago, and the buildings have never been removed and

(a) R. S. O. 1897 c. 71.

(b) Con. Rules, 1897 Form 191.

are now old fashioned, and not such as to be in keeping with the buildings in the neighbourhood (&c., &c., *give particulars*).

5. The petitioners and the other persons interested have no means whatever of removing the said buildings or of erecting suitable buildings upon the said lands so as to ensure the said lands being productive in case the same fall into possession of the said petitioners upon the death of the said A.B., as well as to make the same remunerative during his lifetime.

6. The infant children of the petitioner A.B. reside with and are being supported and maintained by the said A.B. out of the rents and profits of the said lands and premises, and he has not any means of any consequence either for the support and maintenance of them or of himself and wife beyond the income from the said lands.

7. The petitioners are desirous that the said property should be (*set out what is desired to be done*).

8. The only persons other than the petitioners who are interested in the said lands are the infant children of the petitioner A.B. above named, that is to say: (*name children*), and the petitioners submit that it is for the best interests of all parties interested that the said property should be [leased, &c.]

9. The petitioners aver that if the said property is not dealt with as proposed in this petition the same will become depreciated in value in respect of the buildings upon the same and that the increased productive value thereof which can be obtained by leasing the same will be lost to the parties interested.

10. No application to the Legislature has at any time been made or refused for the purpose of leasing the said settled estate or dealing with the same in anyway (*or as the case may be*).

The petitioners therefore pray, &c., &c.

(*State briefly relief sought.*)

Notice to be indorsed on petition.

This petition is filed by Messrs. _____ of No. _____ Street,
in the City of _____ in the County of _____,
solicitors for the within named petitioners on whom all orders

of the Court or of a Judge in Chambers or notice relating to the subject of this petition may be served at their office aforesaid.

Notice Pursuant to Section 25 of the Act. (Rule 974.)

(Title same as Petition, Form 1423.)

1426

Take notice that (*name petitioners and their address, as in the petition*) have filed in the Central Office at Osgoode Hall, Toronto, a petition in the above matters praying that (*as in the petition, and describing the lands, messuages or tenements as in the petition*), and it is intended to apply to the said Court for an order in accordance with such prayer, and you are (severally) hereby required to file a notification in the said Central Office at Osgoode Hall, Toronto, in writing, within 14 days after the service hereof, whether you assent to or dissent from such application, or submit your rights or interests so far as they may be affected by such application, to be dealt with by the Court, and a copy of such notification is to be delivered to the petitioners' solicitors or left for them at the address specified at the foot hereof, and may be so delivered by transmitting the same to them by post at such address.

Notice pursuant to R. S. O. c. 71. s. 25.

If no notification shall be so filed and delivered within the time above limited you will be deemed to have submitted your rights and interests to be dealt with by the Court, and the Court may thereupon make such order as it shall see fit without further notice to you.

In the event of your dissenting from such application and desiring to be heard in opposition to the application, you are by your notification to require notice to be given to or left for you or your solicitor at a place (specifying it) within two miles of the said Central Office within days of the day on which the petition is fixed for hearing.

You or your solicitor can, upon reasonable notice to the under named, *A.B.*, inspect and peruse a copy of the petition without payment of any fee, and you are entitled at your own expense to have a copy of such petition furnished to you.

Where a trustee is to be served under section 29 of the Act, add: "This notice is given you in pursuance of the above Act, because you are seised or possessed of an estate in trust for (*name beneficiary*) whose consent or concurrence to or in the application is required by the Act."

Dated day of

A. and B.,

Petitioners' Solicitors,
(*address*)

To (*name person or all persons to be served pursuant to above section*).

NOTE.—A copy of the above notice, with a notification at the foot thereof to be filled up by you, is sent herewith.

Form to accompany Notice, pursuant to Section 25 of the Act. (Rule 974.)

1427

Form of consent or dissent to accompany the notice. (a)

(*Copy Notice as in Form No. 1426.*)

In pursuance of a notice, of which the above is a copy, served on me on the day of I hereby notify that I [here insert "assent to the application" or "dissent from the application" or "submit my rights and interests so far as they may be affected by the application to be dealt with by the Court."]

If you dissent and desire to be heard in opposition thereto, add, "And I desire to be heard in opposition to the application and require notice to be given to at (*naming place within 2 miles of the Central Office*) of the day fixed for the hearing of the petition."

Dated this day of

(*Signature and address of person giving notice.*)

To Messrs. (*names of solicitors of petitioner*).

Form of Notice to be Inserted in Newspapers if Directed Pursuant to Section 30 of the Act. (Rule 985.)

(*Title as in Petition.*)

1428

Notice to be published in newspaper. (b)

By direction of Mr. Justice notice is hereby given that a petition has been filed in the Central Office of the

(a) Con. Rules, 1897, Form 193.

(b) Con. Rules, 1897, Form 194.

High Court of Justice at Toronto, praying for a sale [or for powers to grant a mortgage or leases of the above mentioned hereditaments [or otherwise according to the circumstances], and the said petition will be heard before the Court at Osgoode Hall, Toronto, on the day of next, at the hour of 10 o'clock in the forenoon, or so soon thereafter as the same can be heard, and any person, whether interested in the estate or not, may at that time and place be heard in opposition to or in support of such application. The petition may be inspected on application to Messrs. A. and B., of the solicitors for the petitioners.

Dated at the day of , 19 .

A. & B.

Solicitors for Petitioners.

Form of Order.

(Title same as Petition.)

1429

1. Upon the humble petition of C.D., presented unto the Court this day by (name of petitioner or petitioners in full) praying (as in the petition set out, and describing the lands, messuages or tenements as in the petition), and it appearing to the satisfaction of the Court that neither the applicant nor any other party entitled has previously applied to the Legislature of the Province of Ontario to effect the same or a similar object to that prayed for in the petition (or if any such application has been made, shew that the same was not rejected on its merits or reported against by the Judge to whom the Bill may have been referred), and it appearing to the satisfaction of the Court that the said petitioner was duly qualified to apply by way of petition for the relief asked for, and that the petitioner duly filed in the Central Office at Osgoode Hall, Toronto, his said petition, and thereafter properly gave notice of the filing of the same to (here give the names in full of all persons other than the petitioner, to whom notice of the application has been given), and required them to notify in manner directed by *The Settled Estates Act* their consent or otherwise to the application, of whom (here give the names in full of all persons served with notice of the application who concur or consent) have concurred in and consented to the prayer of the said petition being granted, and of whom (here

give the names in full of all persons served with notice of the application who have neither filed nor served any notification of consent or dissent) have neither consented to nor dissented from the prayer of the said petition being granted, and of whom (here give the names in full of all persons served with notice of the application who have submitted their rights and interests to be dealt with by the Court) have submitted their rights and interests to be dealt with by the Court, and of whom (here give the names in full of all persons served with notice of the application who have appeared in opposition to the prayer of the said petition being granted) have appeared in opposition to the prayer of the said petition being granted, and of whom (here give the names in full of all persons served with notice of the application who have appeared in support of the prayer of the said petition being granted) have appeared in support of the prayer of the said petition being granted, and of whom (here give the names of all trustees served with the notice of the application, and the names of the beneficiaries on whose behalf the trustees are served) are trustees representing (names of beneficiaries) which said trustees have been duly served with notice of this application, and who consent to [or dissent from] the granting of the prayer of the said petition (as the case may be), and of whom (here give the names in full of all persons served with notice of the application who have filed and served any notice setting forth the purport thereof, but who have not appeared before the Court), and of whom (here give the names in full of any infants or persons of unsound mind not so found for whom the Official Guardian ad litem or any other guardian ad litem appointed by the Court has been served) being infants [or, persons of unsound mind, as the case may be], the Court has approved of the concurrence and consent by the Official Guardian ad litem [or, other guardian ad litem appointed by the Court, as the case may be], on behalf of such infant [or, person of unsound mind, as the case may be] to the prayer of the said petition being granted; and of whom (here give the names in full of any lunatics and of their committees who have been served for the lunatics with the notice of this application), being a lunatic represented by E.F., his committee, the Court has approved of the said committee concurring and consenting on behalf of the said lunatic to the prayer of the said petition being granted; and this Court having been pleased to dispense with service of notice of this application on (here give the names in full

of all persons on whom service of the notice of the application has been dispensed with by the Court), and the Court having ordered that notice of this application should be inserted in the a newspaper published at in the County of and it appearing that the said notice was duly published in manner directed, in pursuance of which advertisement (*here give the names of all persons who have appeared pursuant to the advertisement*) have appeared in pursuance of the said advertisement and have been heard before this Court (*or, no one having appeared pursuant to the said advertisement, as the case may be*), and this Court being satisfied from the affidavits of (*here give the affidavits filed*) filed in support of this petition, and from the evidence of (*here give the names of all persons who have given viva voce evidence in support of the petition*) that it is proper and consistent, with a due regard for the interests of all parties entitled under the said will [*or, other settlement, as the case may be*] that the prayer of the said petition should be granted, and it appearing that all parties entitled to notice of the hearing of the petition have been duly notified of the hearing hereof, and upon reading the said petition and hearing what was alleged by counsel for (*names of all parties appearing*).

2. This Court doth order that (*here set out the relief as asked for by the petition so far as the same has been granted by the Court.*

[*If any persons' rights are reserved by the order, then shew whether the order is made subject to any and what rights, estate or interest of any person whose concurrence or consent has been refused, or who shall not, or shall not be deemed to have submitted his rights or interests to be dealt with by the Court, or whose rights, or interest, ought, in the opinion of the Court, to be excepted.*

If the purchase money is to be paid into Court to trustees state the provisions as to disposition of purchase money having reference to sections 33, 34, 35 and 36 of the Act. (a)

If the Court authorizes a lease, see Rule 988 as to what the order shall contain.]

(a) R. S. O. 1897 c. 71.

CHAPTER XXI.

PROCEEDINGS UNDER "THE QUIETING TITLES ACT." (a)

NOTE.—In the heading of the petition the lands should be shortly described, to avoid expense in advertising, but a loose indefinite description, as "part of lot 2," without saying what part, is to be avoided. If the land is, and for some time past has been, in the occupation of any person, it may sometimes be proper to state, "now and for some time past occupied by . . ." So also, if it adjoin any well-known farm or house, or has been long occupied by a well-known individual or company, or a bank, it may be advisable to say that it so adjoins or is occupied, as the case may be. In the body of the petition, however, the description should be as certain as in a conveyance, both to identify the whole land claimed with the County Registrar's certificate, and in order that the certificate of title may follow it, and for registry purposes. For the same reasons also the petition should properly describe the estate or interest claimed in the land. Moreover, with a view to notice, it is important that the petition should be correct, for the petition and the notice under it should not be for a larger interest than the petitioner has, as for instance, for a fee simple absolute, when the estate is a fee tail, or liable to be defeated by an executory devise over. In short, the petition should be so framed as that the Judge can grant what is therein prayed for.

In the following forms some of the cases put come under the 3rd section of the Act.

A mortgage in fee outstanding and unsatisfied will not prevent the application of the Act, but the consent of the mortgagee should be obtained, or he will have to be served with notice under the Act.

If an applicant find a difficulty in describing his interest by reason of the informality of any instrument, he may have to set out the material parts of it *verbatim*, and claim under it.

In the High Court of Justice.

In the matter of (*see remarks above, and R. S. O., c. 135, Form 1*).

To the Honourable the Judges of the High Court of Justice for Ontario.

The petition of _____, of _____, sheweth:

1. That the petitioner is absolute owner in fee simple in possession (*or, as the case may be*) of the following property (*describing it with precision*).

Or, if the estate be a present one, liable to be defeated by an executory devise over, or by limitations by way of shifting use contained in a deed, say, the petitioner is tenant in fee simple, in possession (or as the case may be) of the following property (describing it), determinable on (set out the event whereon the devise over takes effect, or the use shifts, and referring to the instrument); [or, if the estate be not in possession, (b) but a future estate dependent on the determination of a prior estate by executory devise or shifting use, say, the petitioner is tenant in fee simple in reversion or remainder (or as the case may be)] of the following property, &c., dependent and to take effect in possession on [setting out the event and the instrument; or say, on the determination of the estate thereby devised or granted to, &c. If the event has happened whereon the devise over takes effect, or the use shifts, and is executed in possession, then claim as in an ordinary case of an absolute estate in possession. In the case of an estate tail, the issue in tail may have been barred, but not those in remainder or reversion, in which case the applicant may claim that he "is entitled to a base fee," or, "is tenant in tail entitled to a base fee," according to the fact, "within the meaning of the Revised Statutes of Ontario, 1897, chapter 122." If neither issue in tail, or remainderman, or reversioner, have been barred, then claim "as actual tenant in tail within the meaning," &c. If the petitioner claims a term of years renewable from time to time in perpetuity or otherwise, state, is tenant for a term of years expiring on _____, created by and subject to the provisos, rents, conditions, covenants and agreements contained in a certain indenture between, &c., dated, &c., registered, &c., renewable as in the said indenture specified.]

(b) Formerly the fact that the land was in the adverse possession of some other person was a bar to the petitioner's obtaining a certificate under the Act. This is no longer so: see R. S. O. c. 135, s. 43.

2. That there is no charge or other incumbrance affecting the petitioner's title to the said land [except an annuity to under the will of , or, under an indenture dated , between, &c., , or, a mortgage dated , between , or, the lien of (a) as a vendor for purchase money.]

(If the incumbrances be many, it will be better to name them in the Schedule, as authorized by the Statutory form, (b) rather than embody them in the petition.

In case any charges or incumbrances, apparently existing, be not admitted, so that the petitioner is not willing to take a certificate subject thereto, and the petitioner denies the same, or claims paramount or adversely thereto, then the petition will be varied, and such charges, &c., will be set out as in the statutory form "That the only persons claiming to have any claim or title upon, or to, the said lands adverse to the petitioner are," &c. Thus, if a petitioner is willing to take a certificate subject to an incumbrance, he excepts it; if, however, he claims adversely to it, as, for instance, contending that the incumbrance is barred by time or by payment, and by presumption of reconveyance or otherwise, he sets forth the incumbrance as in the form, and those claiming under it will be regarded as adverse claimants, and on proper proceedings, and notice to them, they will be barred.

If the names of parties having any estate or interest cannot be ascertained, as in case of absent heirs, it will suffice to describe them by nomen collectivum as the heirs at law, of, &c.)

The petitioner therefore prays that his title to the said land may be investigated and declared under "The Quieting Titles Act."

(Signed)

A.B.,

or, C.D., Solicitor for A.B.

MEM. 1. The petition is to be signed by applicant or his solicitor; and a memorandum of address should be indorsed on the petition, so that the acting Referee may communicate with the petitioner or his solicitor by mail, if necessary, *e.g.*, "This petition is filed by of solicitor for the petitioner."

(a) See R. S. O. c. 135, ss. 2, 3, 4, and Schedule.

(b) See R. S. O. c. 135, Sched. Form 1.

2. If the title is to be investigated by a local Master, the petition must be indorsed thus: "To be referred to the Master at , and to Mr. , Inspector of Titles." Rule 1017. Where no such memorandum is indorsed, the petition is referred to the Referee in Toronto. Rule 1018.

If the petitioner desires, he can refer the petition at once to the Toronto Referee, without the intervention of any local Master.

3. Where a local Master is selected as a Referee, the petition must be presented to the Inspector of Titles at Toronto, for entry, before filing: see Rule 997.

After the petition has been entered with the Inspector, it is then to be filed in the Central Office, from which will be issued the certificate of its filing for registration; and from which it will be forwarded to the local Master to whom it is referred.

In the High Court of Justice.

[L. S.]

I certify that an application has been made by petition duly filed by A.B., of , yeoman, to the High Court of Justice, under The Quieting Titles Act, for a certificate of title to the following lands (*describing them, as set out in the body of the petition.*)

At the request of the petitioner this certificate is given for the purpose of registration pursuant to the Act.

Given under my hand and the seal of the said Court this, &c.

(Signature)

Clerk of the Records and Writs.

1431

Certificate of filing petition for registration. (c)

I, , Registrar [*or, Deputy Registrar*] of certify that the foregoing are true extracts of all the instruments or proceedings registered in the Registry Office for affecting the (*describe the lands in the same manner as they will require to be set forth in Certificate of Title.* (d) (*Signed.*)

1432

Registrar's certificate s. 6, sub-sec. 2. of the Act.

(c) See R. S. O. 1897 c. 135, s. 6, and Sched. Form 2.

(d) The Registrar must necessarily specify the land to which his certificate relates with particularity, and hence it will be seen that this is one reason why the petition must also do so, otherwise the description of the land in the petition and in the Registrar's certificate would not be identical.

In case a prior certificate or abstract has been given, the following form may be used:—

I certify that no instruments or proceedings have been registered in the Registry Office of _____ up to this date, affecting the (*describe land*), except as above mentioned, and except the following, which are registered since the date of the above certificate.

1433

Affidavit of
petitioner.

In the High Court of Justice.

In the matter of _____ (*describe lands as in the title of the petition*).

I, _____, of _____, the petitioner in this matter, make oath and say:—

1. To the best of my knowledge and belief, I am the absolute owner in fee simple in possession (*or as the case may be, following the words of the petition*) of the following lands (*describing them*), being the lands mentioned in the petition in this matter.

2. There is no charge or other incumbrance affecting my title to the said land [*except, stating any incumbrances which may exist.*]

3. I am not aware of the existence of any claim adverse to or inconsistent with my own to any part of the land claimed by me, or to any interest therein [*except, specify the adverse claim, if any, giving the name and address of the claimant, if known, and stating how the claim arises.*]

4. The deeds and evidences of title which I produce in support of my application herein, and of which a list is contained in the schedule of particulars produced by me in support thereof (*a*), and now shewn to me, and marked with the letter A, are all the title deeds and evidences of title relating to the said land which are in my possession or power.

5. The title deeds and evidences of title relating to the said land which are set out or mentioned in the schedule hereto marked as Exhibit B., are in the possession or power of _____, of _____ (*name of the person*).

6. I do not know where, or in whose possession or power the title deeds and evidences of title set out as mentioned in the schedule hereto marked as Exhibit C. are. For the said

(*a*) The Commissioner administering the affidavit should identify the schedule as usual.

last mentioned title deeds and evidences of title I have caused the following searches to be made, namely (*set out the facts, shewing sufficient to let in secondary evidence*).

7. I am [*or John Doe, yeoman, is—shew under what claim or title*] (*b*) in possession of the land; and to the best of my knowledge possession has always accompanied the title under which I claim (*a*) since the year , in which year one , through whom I claim took possession, and prior thereto the land was in a state of nature. (*If possession has not always accompanied the title under which the petitioner claims, state correctly the facts as to the actual possession.*)

[*Or if the applicant cannot give a complete account as to possession, or can give none at all, let him shew some sufficient reason therefor.*]

8. To the best of my knowledge, information and belief, this affidavit and the other papers produced herewith in support of my petition, and which are set forth in the said schedule of particulars, fully and fairly disclose all facts material to my title, and all contracts and dealings which affect the same or any part thereof, or give any right as against me.

9. There are no arrears of taxes due upon the said lands, nor have the said lands, or any part thereof, been sold for taxes during the past year, nor under execution during the past six months, and I do not know of any writs of execution in the hands of the sheriff against me, or affecting the said lands.

If the petitioner desires a certificate free from easements: (see R. S. O. c. 135, s. 25), add,—

10. To the best of my knowledge and belief, no person or body corporate has any right of way, or of entry, or of

(*b*) See Rule 1001. It will generally suffice to go back 20 years only as to possession going with the title.—Where possession does not accompany the right of possession, and some other than the person claiming has been in possession without or against the assent of the claimants or of any one through whom he claims, suspicion at once arises that such occupant had some claim or title.—Possession indeed is *prima facie* evidence of seisin in fee—the applicants, therefore, must displace any possession except under the chain of title; and if any has existed, account for it, and remove the suspicion which will otherwise exist in the mind of the Referee. Unless satisfactorily accounted for, it is probable that the Referee would require notice of the application to be given to the occupant.—Adverse possession at the time of applying will not prevent the title being investigated under the Statute, and if the petitioner is successful in establishing his title the adverse occupant may be ejected: R. S. O. c. 135, s. 43.

damming back water, or of overflowing, or of placing or maintaining any erection, or of preventing the placing or maintaining any erection, on, in, to or over the said lands, other than myself [except, *giving the names and addresses, if possible, of any parties having any easement or right, and state the nature thereof*], and the said land is not subject to any easement or dominant right whatever [except as aforesaid].

1434

Certificate of
counsel, s. 7,
clause 6 and
s. 9, Quiet-
ing Titles Act.

In the High Court of Justice.

In the matter (*as in petition*).

I, _____ of _____ [barrister or solicitor], hereby certify that as [counsel or solicitor] for _____ in this matter, I have investigated his title set forth in his petition, and I believe him to be the owner of the estate which he claims in the petition [subject only to the charges and incumbrances therein set forth].

I further certify that I have conferred with the applicant on the subject of the various matters set forth in his affidavit in support of his petition, and believe the same to be true (a).

(Every document produced should be numbered, and the same number should appear in the schedule opposite to each document specified therein).

1435

Schedule of
particulars
under Quiet-
ing Titles
Act.

In the High Court of Justice.

In the matter of (*as in petition*).

Schedule of Particulars.

1. Affidavit of John Doe.
2. Conveyance, Brown to Jones, dated _____.
3. Letter, Jones to Robinson, dated _____.
4. Probate Robinson's Will.

(Petitioner to sign schedule, and Commissioner to identify it in the usual way, as it is an exhibit, and referred to as such in the affidavit of applicant).

(a) The counsel or solicitor is of course not bound by the petition, and if any claim or charge or material fact or matter exists not set forth in the petition, he should mention it.—The petitioner in such case should reconsider the petition. The certificate should not be dated before the affidavit of the petitioner has been sworn.

TREASURER'S OFFICE, CO. OF

Ontario, day of , 19 .

1436
Certificate of
payment of
taxes, s. 12,
Quieting
Titles Act,

I certify that no charge for arrears of taxes appears at the date hereof in the books in this office against [Lot No. 27, in the first concession of the Township of Vaughan].

And I certify that the return of lands in the Township of Vaughan in arrears for taxes for the year 19 (a) has been made to this office, and I further certify that the said land has not nor has any part thereof been sold for taxes for eighteen months preceding the date hereof.

A. B., Treasurer.

(a) If the Roll has not been carried in for the year preceding the date of the certificate, a similar certificate for the past year must be signed by the Township Treasurer, if the Roll has been returned to him; and if the Roll has not been returned to him, a receipt for the taxes for the past year by the collector of taxes must be produced, but the County Treasurer's certificate will be required to shew that there are no previous arrears of taxes.

The certificate of title is granted subject to the current year's taxes: see the Act, s. 25.

SHERIFF'S OFFICE, TORONTO,

County of York.

1437
Sheriff's cer-
tificate as to
executions,
under Quiet-
ing Titles Act.

I hereby certify that I have not at the date hereof in my office any writ of execution against the lands of A.B., C.D., E.F., or any or either of them, and that I have not had any such writ for thirty days preceding the date hereof.

I further certify that I have not sold lot [No. 27, in the first concession of Vaughan, in the County of York], under any writ of execution for six months preceding the date hereof.

A.B., Sheriff.

Dated the day of , 19 .

NOTE.—*The Court allows the Sheriff 30 cents for each search, and 75 cents for the certificate, in which all the names are to be inserted.*

The object of the certificate is to show that there are no executions affecting the lands, consequently the names of former owners must be included as against whom it is possible executions may have been kept alive.

The name of the petitioner may be omitted, as a further certificate as to him will be required after the title is passed.

(Formal parts: see No. 1433.)

1438

Affidavit
proving pos-
session.

1. *Shew deponent's knowledge of land in question, and length of time he has known same.*

2. *Shew who have been in possession of same, and for what periods respectively.*

3. *Shew in what manner possession was held by the several persons named, e.g., as by living on, or by cultivating the land, and that the possession of each party named extended to the whole of the land in question; or if it did not, then particularizing the portions respectively held by them.*

4. *Shew whether land is fenced in, and how long it has been so fenced; and if it be only partially fenced, shew what part is fenced, and how possession has been held of unfenced portion.*

1439

Advertise-
ment, s. 14,
Quieting
Titles Act,
and Con. Rule
1004.

In the High Court of Justice.

In the matter of (a).

Notice is hereby given, that John Thomas, of the City of Toronto, Esquire, has made an application to the High Court of Justice for a Certificate of Title to the above mentioned property, under "The Quieting Titles Act," and has produced evidence, whereby he appears to be the owner thereof in fee, free from all incumbrances (except, *stating the incumbrances, if any*) (*the interest of the petitioner should be described, as it will be set out in the Certificate of*

Title); wherefore, any other person, having or pretending to have any title to or interest in the said land or any part thereof, is required, on or before day, the day of now next ensuing, to file a statement of his claim verified by affidavit in my office at , and to serve a copy on the said John Thomas, or on , of , his solicitor, at his office in the of (*as may be*), and in default every such claim will be barred, and the title of the said John Thomas become absolute and indefeasible at law and in equity, subject only to the reservations mentioned in the 25th section of the said Act therein mentioned, [and to the following charges and incumbrances].

Dated this day of , 19 .

(Signed)

Referee of Titles.

To be inserted in the Ontario Gazette on the 1st day of next, and in the on the 8th and 23rd days of the same month, or on the day of publication in the week ending nearest to those days, and to be put up and continued on the door of the Court House of the County, and in some conspicuous place in the Post Office nearest to the lands.

1440

Referee's direction for advertising, &c., to be indorsed. (a)

(*Formal parts: see No. 1433.*)

1. I have no interest, direct or indirect, in the above described parcel of land.

2. I am well acquainted with the said parcel of land.

3. I reside within miles from the said parcel, and have so resided for years past, and know the value of the said parcel of land.

1441

Affidavit to dispense with advertising in Gazette and local papers.

(a) See Rule 1004.

4. [*State means of knowledge, e.g.,* I have, within the last months, bought acres adjoining the said parcel, and I know the prices realized for other lands lately in the same neighbourhood.]

5. From the knowledge I possess of the value of lands in the neighbourhood of the above mentioned parcel, I say the value of the said parcel is not more than \$3,000, and I verily believe it is not worth more than \$.

1442

Consent by
person appear-
ing to have an
adverse claim.

In the High Court of Justice.

In the matter of (*as in petition.*)

I, , of , yeoman, do hereby consent that a Certificate of Title be granted to John Thomas, of , Esquire, declaring him to be the owner of the above mentioned lands, free from any right or claim on my part thereto [save and except only my rights as mortgagee under a certain indenture of mortgage dated the day of , and made by the said John Thomas to me for securing \$2,000 and interest, as therein mentioned.]

Dated .

Witness.

(Signed)

C.D.

1443

Analysis of
title by Mas-
ter or acting
Referee.

In the High Court of Justice.

In *Re* John Thomas, Petitioner.

REFEREE'S NOTES. (a)

No. 1. Petition filed 1 June, 19 .	<i>Date of receipt by Referee.</i>
2. Affidavit of petitioner.	Paragraph 5 defective.
3. Schedule of Papers	Must be signed by petitioner, and marked as Exhibit by Commissioner.
4. Certificate of Solicitor.	
5. Registrar's Abstract.	Must be carried down to registration of Certificate that petition is filed.
6. Sheriff's Certificate.	No Writs of Execution, and no sales under execution.
7. Treasurer's Certificate.	No taxes or sales of taxes. Roll returned.
8. Statement of facts.	

INSTRUMENTS
OF CONVEYANCE.

NOTES.

9	6th April, 1797. The Crown to Peter Lee, in fee.	Original not produced; a certified copy must be obtained and produced before the papers are laid before the Inspector.
10	28th April, 1845. Timothy Hespeler to David Scott, in fee.	The title must be deduced from the Patentee to the first grantor, T. Hespeler, and possession must be shewn in Hespeler and the subsequent owners. If the deed was executed by Attorney, the power must be proved, and Hespeler must be shewn to be living when the deed was executed under the power, and that he was not married, or that his wife's dower was barred.

(a) These notes are for the purpose of drawing the Referee's attention to the proof required.

INSTRUMENTS OF CONVEYANCE.	NOTES.
11 25th May, 1746. David Scott to Timothy Hespeler.	Redeemable. (Means that it was a mortgage.)
12 29th June, 1867. Timothy Hespeler to John Thomas, petitioner.	See below K.
13 10th June, 1845. David Scott to Samuel Reid, in fee.	Was Scott married? If so, the dower of the wife must be shewn to be extinct, or it must be barred.
14 Same date. Reed et ux. to David Scott.	Redeemable.
15 1st June, 1846. Reed devised to Ross and others, as trustees, with power to sell.	
16 2nd February, 1847. David Scott to Robert Cathcart, Assignment of 14.	If mortgage be discharged, certified copy of discharge must be produced.
17 3rd February, 1847. Ross and others, trustees, sell and convey to Andrew Gray, in fee.	Deeds are not produced; they must be so, or good cause shewn.
18 Same date. Gray et ux. to Ross and others.	
19 27th December, 1849. Ross and others to Andrew Gray.	Redeemable.
20 27th April, 1850. Gray et ux. to John Thomas, the Petitioner, in fee.	

1444

Another form of analysis.

The following is a further form, the first column giving the dates and parties, the second the remarks and defects, and the third shewing how cleared up or disposed of. It will be found advisable to write across a foolscap sheet so as to give sufficient space, and to allow more space for the second and third than for the first column.

PARTIES, DATES, &c.	DEFECTS, REMARKS.	HOW DISPOSED OF.
1st January, 1840. 1. Copy of Patent to John Doe, in fee.	Not certified as copy.	Certified copy produced.
6th January, 1841. 2. Devise in fee, John Doe to Richard Roe.	Attestation clause does not shew how will executed.	Heir at law has executed confirmation.—See <i>Deed D.</i>
10th June, 1850. 3. Certified copy registered Memorial, Richard Roe to John Dunn, in fee, signed by grantor, and of affidavit of execution.	No evidence of proper search for original instrument.	Affidavits of <i>A.B.</i> and <i>C.D.</i> of proper search.
1st June, 1860. 4. Robert Doe to John Dunn, in fee—Confirmation of devise.		

In the High Court of Justice.

In the matter of .

Take notice, that John Doe, of the City of Toronto, Esquire, hath made an application to the High Court of Justice for Ontario for a certificate of his title to the above mentioned property, under "The Quieting Titles Act;" and take notice, that if you claim any interest therein, you must lodge your claim in writing, verified by affidavit, stating the particulars thereof, at my Chambers, in , on or before the day of now next ensuing, and serve a copy on the said John Doe (*give address*), or Richard Roe, his solicitor, at his office in (*give address*), and, in default thereof, any claim, right, or interest you may have therein at law or in equity will be for ever barred and extinguished.

1445

Notice to person apparently interested, under s. 16 of Quieting Titles Act, and Rule 1005.

This notice is served on you because [*give briefly the reason why notice is served, e.g., from the evidence adduced before me it appears that you claim to be entitled to the said land, as heir at law of C.E., of , deceased,*] whereas the said John Doe claims to be entitled to the said lands, free from any claim whatever on your part.

Dated this day of , 19 .

Referee of Titles.

To (*name the parties to be served, with their addresses.*)

1446

Adverse claim
under Quiet-
ing Titles Act,
s. 18. (a)

In the High Court of Justice.

In the matter of (*as in the petition.*)

G.H., of (*occupation*), claims to be owner of the said lands (*or of part of the said lands*) described as follows: —(*state briefly the nature of the claim, and the grounds of it.*) (a)

Dated

(Signed) G.H. or E.F.
Solicitor for G.H.

Or, C.D., Solicitor for A.B. (*give address.*)

This should be filed with the affidavit required by section 18 (2), with the Referee to whom the petition is referred. It should be indorsed with the usual notice of the name and address of the party or his solicitor, by whom it is filed: See Rule 136.

1447

Affidavit veri-
fying adverse
claim, under
Quiet-
ing Titles Act, s.
18 (2).

In the High Court of Justice.

In the matter of (*as in the petition.*)

I, A.B., of , —, make oath and say, that to the best of my knowledge and belief, I am the owner of the estate [*or interest*] which is claimed by me in my notice of claim in this matter, (b) now produced to me marked with the letter A, subject to, &c. (*as the case may be.*)

(a) See R. S. O. 1897 c. 135, Sched. Form 3. The nature of the claim can be framed from the form of claim of an applicant. See form of petition, No. 1430.

(b) This should be referred to as an exhibit, and marked by the Commissioner.

In the High Court of Justice.

In the matter of Lot, &c., &c.

I have perused this Title, and I find the proofs thereof defective in the following particulars (*set them forth shortly, in some such form as the following:*)

1. The dower of Mary, the wife of James Harris, does not appear to be effectually barred, she not having executed the deed.

2. The certified copy of the discharge of the mortgage to Henry Brock is not produced.

3. There is no evidence that Isaac Brock was living when his conveyance by attorney to John Johnson was executed.

4. The will of Thomas Brock has not been produced.

5. It is not shewn that John Ross was not married when he conveyed.

6. The will of Abraham Oldham does not seem to pass a fee, but to create an estate tail, and this must be barred. (See R. S. O. c. 122.)

7. There is no proof of the heirship of Joseph Styles.

A.B.,

3rd January, 19

Referee.

1448

Memorandum of Master as to defects in proofs under Rule 1003. (c)

In the High Court of Justice.

These are to certify, under the authority of The Quieting Titles Act, that _____, of _____, in the County of _____ and Province of Ontario [Esquire], is the legal and beneficial owner in fee simple in possession of (*describing lands*); subject to the reservations mentioned in the twenty-fifth section of the said Act.

And to the taxes payable, or to become payable, in respect of the said parcel of land for the current year.

[And subject, also, to the rights of _____, under an indenture of lease dated the _____ day of _____, and made between _____];

1449

Form of certificate of title where petitioner is entitled to legal estate. (d)

(c) To be delivered to the petitioner or his solicitor.
(d) See R. S. O. 1897 c. 135, Sched. Form 4.

[And subject also, to the rights of _____, under an agreement for the purchase of the said parcel of land, dated the _____ day of _____, and made between the said _____ of the first part and _____ of the second part;]

But free from all other rights, interests, claims, and demands whatever.

[L.S.] In witness whereof, the Honourable (*name of Judge*) has hereunto set his hand, and the seal of the said Court has been hereunto affixed, this _____ day of _____, one thousand nine hundred and _____

Signature of Judge.

1450

Form of certificate of title where legal estate is outstanding.

In the High Court of Justice.

These are to certify, under the authority of The Quieting Titles Act, that _____, of _____, in the County of _____, and Province of Ontario (lumber merchant), is the beneficial owner in fee simple in possession of (*describing lands*); subject to the reservations mentioned in the twenty-fifth section of the said Act;

And to the taxes payable, or to become payable, in respect of the said parcel of land for the current year;

[And subject, also, to a certain indenture of bargain and sale, by way of mortgage, dated the _____ day of _____, one thousand nine hundred and _____, and made between _____ for securing the payment of _____ and interest thereon, at the rate, and payable at the days and times therein mentioned;]

[And subject, also, to the rights of _____, as lessee, under an indenture of lease dated the _____ day of _____, and made between _____, of _____, and _____, of _____;]

And subject, also, to the rights of _____, under an agreement for the purchase of the said parcel of land, dated the _____ day of _____, made between the said _____ of the first part and the said _____ of the second part;]

But free from all other rights, interests, claims, and demands whatever.

And these are further to certify, that the legal ownership or estate in fee simple of and in the said parcel of land

was conveyed to the said _____ by the said indenture of the day of _____

In witness whereof, the Honourable Chancellor of Ontario and President of the said Court (or as may be), has hereunto set his hand, and the seal of the said Court has been hereunto affixed, this _____ day of _____, one thousand nine hundred and _____

In the High Court of Justice.

1451
Certificate of title of mortgagee in fee.

These are to certify, under the authority of The Quieting Titles Act, that under and by virtue of an indenture of mortgage bearing date, &c., and made between (*set out parties*), the said _____ (*mortgagee*) became mortgagee of an unincumbered estate in fee simple in those certain parcels of land known and described as, &c., &c. (*describe land*), and now appears to be the first mortgage thereon.

Proceed as in Form No. 1449.

These are to certify, under the authority of "The Quieting Titles Act," that A.B., of _____ [as administrator of the real and personal estate of, or as executor of the last will and testament of] O.H., late of _____, who died on or about _____ day of _____, is under and by virtue and subject to the provisions of The Devolution of Estates Act, the owner in fee simple in possession of, &c. [*proceed as in Form No. 1449.*]

1452
Certificate of title of personal representative.

For forms of certificate in case of trustees under a will: see Re Montgomery, certificate No. 409; Re McArthur, certificate No. 323; Re Hickson, certificate No. 292.

For form of certificate in case of a mortgagee, see Re Spettigue, certificate No. 390.

Tenant in remainder: Re Musgrove, certificate No. 340.

Tenant in remainder where tenant for life does not join: Re O'Dwyer, certificate No. 570.

PROCEEDINGS UNDER "THE QUIETING TITLES ACT."

Tenant for life in equitable estate: Re Deacon, certificate No. 417.

Tenant for life in legal estate: Re Arnold, certificate No. 614.

For form of certificate of heirship under the Quietening Titles Act, s. 33; See Re Riordan, certificate No. 672; Re Backhouse, certificate No. 63; Re Billington, certificate No. 467.

N.B.—The certificates referred to above are entered in the office of the Clerk of Record and Writs.

1453

Form of Court
deed under
secs. 31 and 32.

In the High Court of Justice.

The High Court of Justice for Ontario, under the authority of The Quietening Titles Act, doth hereby grant unto A.B., &c. (*here describe the premises sold*), to hold the same unto the said A.B., his heirs and assigns for ever (*as the case may be*), subject to the reservations mentioned in the twenty-fifth section of the said Act, and to (*specifying, either by reference to a schedule or otherwise, any of the other charges or incumbrances, exceptions or qualifications to which the title of A.B. is subject*), but free from all other rights, interests, claims, and demands whatever.

In witness whereof, [Chancellor of Ontario and President of the said Court, *or as may be*], has hereunto set his hand, and the seal of the said Court has been hereto set this day of , in the year of our Lord ,

[Signature of Judge.]

M. McM.,

Clerk of Records and Writs.

[L.S.]

1453a

Costs of petitioner under
Quietening
Titles Act.

(*This bill of costs is intended merely to serve as a guide to the profession, and that in simple cases only.*)

In the High Court of Justice.

In the matter of lot No. 9, in the 3rd Concession of the Township of Oro.

The Petitioner's costs in obtaining Certificate.

Instructions for petition	\$4 00
Drawing petition, per folio.....	0 20
Copy to file, per folio.....	0 10

Attending to enter petition with Inspector where necessary	\$0 50
Paid his fees.....	8 00
Attending to file petition with Clerk of Records and Writs	0 50
Paid filing	0 10
Attending to bespeak, and for certificate for registration	1 00
Paid for same.....	1 10
Attending to register.....	0 50
Paid Registrar	
Attending Registrar to bespeak, and for Abstract of Deeds and copies of Memorials of such as are not held by Petitioner.....	1 00
Paid Registrar's fees.....	
Attending Sheriff for Certificates.....	1 00
Paid Sheriff.....	
Affidavits of matter in support of Title, per fo.....	0 20
Engrossing each, per fo.....	0 10
Attending to swear, for each, 50 cents, paid 20 cents..	
Attending County Treasurer for Certificate Taxes..	1 00
Paid for same.....	
The like on Township Treasurer, where necessary...	0 50
The like on Collector, where necessary.....	0 50
Drawing Petitioner's Affidavit and copy, per folio....	0 20
Attending to swear, 50 cents, paid 20 cents.....	0 70
Drawing state of facts, where necessary: (see Statute, sec. 7, sub-sec. 4,) per folio	0 20
Copy thereof, per folio.....	0 10
Drawing Schedule of Deeds and papers, per folio..	0 20
Drawing Certificate of Solicitor or Counsel as to state of title and fee thereon.....	2 00
<i>(To be increased according to the nature of the case.)</i>	
Attending Referee with deeds and papers, and comparing same with Schedule.....	1 00
Attending Referee for advertisement and notice for service on parties who may have claims.....	0 50
Paid for same.....	
Copy of advertisement for Gazette, when necessary..	0 30
Writing with and forwarding.....	0 50
Paid for insertion and for Gazettes.....	
Copies for local newspaper and letter therewith, if ordered by Referee.....	0 80
Copy to affix to Court House door.....	0 30

Paid affixing.....	
Copy to be affixed in Post Office.....	\$0 30
Paid getting same affixed.....	
Affidavit as to insertion in Gazette, local newspaper, and as to affixing same on Court House door and at Post Office, each.....	0 50
Attending to swear, each.....	0 50
Paid swearing and Exhibits.....	
Copy notice to serve on each party [as directed]....	0 30
Attending Sheriff with same to serve.....	0 50
Paid Sheriff, service and for mileage, 13 cents per mile	
Affidavit of service on each party, 40 cents, and oath and Exhibit.....	
Attending to file affidavits with Referee.....	0 50
Attending Referee when satisfied with Title to forward papers to Inspector.....	
Letter to Agent to wait upon Inspector.....	0 50
Paid Agent attending Inspector when title passed, and to bespeak and for certificate.....	1 00
Paid engrossing certificate in duplicate.....	
Attending compare engrossment.....	0 50
Attending Inspector with.....	0 50
Attending for, when signed.....	0 50
Attending Clerk of Records and Writs with, for entry	0 50
Attending him therefor	0 50
Paid his fees	
Paid Agent's letter forwarding.....	0 50
Attending County Registrar with certificate for regis- tration	0 50
Paid his fees	
Attending for same when registered.....	0 50
Paid postages throughout the matter.....	
Bill of costs and copy, per folio.....	0 30

*For Tariff of Disbursements: see Tariff B in App. to Con.
Rules 1897, Items 90-109.*

CHAPTER XXII.

PROCEEDINGS UNDER "THE VENDORS AND PURCHASERS ACT." (a)

In the High Court of Justice.

In the matter of "The Vendors and Purchasers Act." 1454
Notice of
motion under
the Vendors
and Purchas-
ers Act. (a)
And in the matter of the contract of sale, dated , 19 ,
of lands in the .

Between

Vendor,

and

Purchaser.

(*Formal parts: see No. 403.*)

for an order declaring that the objection to the title of the above named vendor to the lands in question made by the above named purchaser on the ground that (*state shortly the ground*) has [*or has not*] been satisfactorily answered by the vendor and that the same does not constitute [*or the same constitutes*] a valid objection to the title. And that a good title has [*or has not*] been shewn in accordance with the conditions of sale. [And for an order directing the said (*vendor*) to repay to the said (*purchaser*) the sum of \$, the deposit paid by him under the contract *as may be necessary under the contract.*] Or for such other order as may seem just. And take notice, &c. (*see No. 403*).

Dated, &c.

(a) R. S. O. 1897 c. 134.

CHAPTER XXIII.

PROCEEDINGS UNDER "THE OVERHOLDING TENANTS ACT." (a)

1455

Notice to quit
by landlord).

Sir,—

I hereby [*if as agent add as agent for your landlord A.B.*] give you notice to quit and deliver up the possession of the messuage [*or rooms, or as the case may be*] and premises with the appurtenances known as situate at in the County of , which you now hold of me [*or of the said A.B.*] as the tenant thereof, on the day of 19 , [*or at the end of your tenancy which shall expire next after the end of one-half year from the time of your being served with this notice*].

Yours, &c.

To

1456

Notice to quit
(by tenant).

Sir,—

I hereby give you notice that I shall quit and deliver up possession of the messuage (*or as the case may be*) and premises with the appurtenances situate at in the County of , which I now hold of you on the day of 19 .

Yours, &c.

To

(*Title &c., as in No. 1458.*)

(*Formal parts: see No. 744.*)

1457

Affidavit of
service of demand of possession.

1. On the day of , 19 , I did personally serve the above named tenant *C.D.* with the demand of possession now shewn to me and marked Exhibit "A," by delivering to and leaving with the said *C.D.* at the of , a duplicate of the said demand signed by the said *A.B.*

2. At the time of such service I demanded of the said *C.D.* to deliver up to the said *A.B.* possession of the land mentioned in the said demand, but the said *C.D.* refused to do so (*or according to the fact*).

(a) See R. S. O. 1897 c. 171. and *Re Snure and Davis* (1902) 4 O. L. R. 82.

1458

Affidavit for
an appoint-
ment before a
judge. (b)

In the County Court of the County of

In the matter of *A.B.*, landlord,
and

C.D., tenant (c).

(*Formal parts: see No. 744.*)

1. I am the above named landlord.

2. By indenture of lease now shewn to me and marked Exhibit "*A.*," I demised to the above named *C.D.* the land therein mentioned (*stating shortly the terms of the demise, or if no written lease, state the terms under which the tenant holds*).

3. On or about the day of , 19 , the tenancy of the above named tenant expired [*or was determined by a notice to quit given on my behalf to the said tenant, or state as may be the fact the manner in which the tenancy has become determined, e.g., by the breach of some covenant in the lease*].

4. On the day of , 19 , a demand was made upon the said tenant for the delivery up of possession of the said lands, a true copy of which demand is now shewn to me and marked Exhibit "*B.*," but he has refused to comply with the same.

5. By reason of the premises I desire to enter upon and have again the said demised premises and to eject the said tenant therefrom.

(*Title, &c., as in No. 1458.*)

Upon the application of the above named *A.B.*, and upon reading the affidavit of filed, I hereby appoint day, the day of , 19 , at the hour of o'clock in the noon at my Chambers (*or as may be*), to inquire and determine whether the said *C.D.* was a tenant to the said *A.B.* for a term or period which has [*expired, or has been determined (by notice to quit, or for default in payment of rent, or otherwise as the case may require)*] and whether the said *C.D.* holds possession of (*shortly describe the land*) against

1459

Appointment.

(b) See R. S. O. 1897 c. 171, s. 3.

(c) See R. S. O. 1897 c. 171, s. 10.

the right of the said *A.B.*, and whether the said *C.D.* wrongfully refuses to go out of possession of the premises, having no right to continue in possession, or how otherwise.

Dated, &c.

Judge of the County Court
of

1460

Notice of
appointment
to be served
on the tenant.
(a)

(*Title, &c., as in No. 1458.*)

Take notice that the above named (*landlord*) of the of in the County of claims possession from you of (*shortly describe the land*) on the ground that your tenancy thereof [expired or was determined by notice to quit on the day of 19 , and that you wrongfully refuse to go out of possession, notwithstanding that possession has been duly demanded from you (*or otherwise briefly state the principal facts alleged by the landlord to entitle him to possession (a)*)].

And further take notice that the Judge of the County Court of the County of has appointed day the day of 19 , at the hour of o'clock in the noon at his Chambers (*or as may be, according to the appointment*) for the purposes mentioned in the appointment, a copy of which is hereto annexed (b).

Dated this day of 19 .
To the above named (*tenant*). (*Signature*)
Solicitor for the said (*landlord*).

(*Title &c., as in No. 1458.*)

(*Formal parts: see No. 744.*)

1461

Affidavit of
service of ap-
pointment, &c.

I. I did on the day of , 19 , personally serve the above named defendant *C.D.* with the appointment, notice of appointment, and affidavit, now shewn to me and marked Exhibits "A," "B," and "C." respectively, by delivering to and leaving with the said *C.D.* at the of , in the County of , a true copy of each of the said exhibits together with a true copy of the lease and demand of possession referred to in the said affidavit and marked as Exhibits "D" and "E" respectively to this affidavit.

(a) See R. S. O. 1897, c. 171, s. 4.

(b) Besides the copy of appointment, there must also be annexed copies of the affidavit on which the appointment was obtained, and of the papers attached thereto: R. S. O. 1897, c. 171, s. 4.

CHAPTER XXIV.

PROCEEDINGS UNDER "THE CREDITORS' RELIEF ACT." (c)

(The forms required in practice under "The Creditors' Relief Act" are to be found in the schedule to that Act. They are therefore not reprinted here.)

1462

Proceedings
under "The
Creditors'
Relief Act."
(a)

(a) R. S. O. 1897 c. 78.

CHAPTER XXV.

PROCEEDINGS UNDER "THE ACT RESPECTING ASSIGNMENTS AND PREFERENCES BY INSOLVENT PERSONS." (a)

1463

Assignment
for the benefit
of creditors.

This indenture made the day of , in the year
of our Lord one thousand nine hundred and , in pur-
suance of the Act respecting Assignments and Preferences
by Insolvent Persons, being chapter 147 of the Revised
Statutes of Ontario.

Between *A.B.* (hereinafter called the debtor) of the first
part; *X.Y.* (hereinafter called the assignee) of the second
part, and the several firms, persons and corporations who are
creditors of the said debtor (hereinafter called the creditors),
of the third part.

Whereas the said debtor has heretofore carried on busi-
ness at , as , and being unable to pay
his creditors in full, has agreed to convey and assign to the
said assignee all his estate, real and personal, for the purpose
of paying or satisfying the claims of his creditors rateably
and proportionately, and without preference or priority.

Now this indenture witnesseth, that in consideration of
the premises and of the sum of one dollar, the said debtor
doth hereby grant and assign to the said assignee, his heirs,
executors, administrators and assigns, all his personal prop-
erty which may be seized and sold under execution, and all
his real estate, credits and effects.

To have and to hold the same unto the said assignee, his
heirs, executors, administrators and assigns, respectively,
according to the tenure of the same.

Upon trust that the said assignee, his heirs, executors,
administrators and assigns, shall sell and convey the real and
personal estate and convert the same into money, and collect
and call in the debts, dues and demands of the said debtor.

And it is hereby declared that the said assignee, his heirs,
executors, administrators and assigns, shall stand pos-
sessed of the moneys derived from the sale of the said real

and personal estate, and of the moneys collected and called in and of all other moneys which the said assignee, his heirs, executors, administrators and assigns, shall receive for or on account of the premises hereinbefore assigned,

Upon trust, in the first place, to pay the costs of and incidental to the preparation and execution of these presents; secondly, to deduct and retain such remuneration as shall be voted or fixed for him, the said assignee, under the provisions of the said Act; and thirdly, to pay off the debts and liabilities of the said debtor to the said creditors, respectively, rateably and proportionately and without preference or priority, and the surplus, after payment of all claims, costs, charges and expenses in full to hand over to the said debtor.

The said debtor appoints the said assignee, his executors, administrators and assigns, his lawful attorney and attorneys, irrevocable in his name to do all matters and things, make, sign, seal and execute all deeds, documents and papers necessary to more fully perfect in him the title to the lands, premises, goods and chattels, debts dues, and demands hereby assigned or intended so to be, and to do all other acts, matters and things necessary to enable him, the said assignee, to carry into effect the intents of these presents.

And the said parties of the third part, being a majority of the creditors aforesaid having claims of \$100 and upwards computed according to the provisions of the said Act, against the said debtor, hereby assent to this assignment, and direct that it be made to the said assignee instead of to the Sheriff of the County of . [Or, and the said parties of the third part being a majority in number and value of the creditors who have pursuant to the said Act proved claims to the amount of \$100 or upwards, hereby assent to this assignment and direct that it be made to the said assignee in the place and stead of the Sheriff of the County of , or in the place and stead of , to whom an assignment was heretofore made by the said debtor on the day of , 19]. (b)

In witness whereof, the said parties have hereunto set their hands and seals, the day and year first above written.

Signed, sealed and delivered, }
in the presence of. }

1464

Affidavit of
new or ad-
ditional as-
signee for
registration.
(a)

In the matter of *A.B.*, of the _____ of
_____, in the County of _____, [hardware
merchant, or as the case may be], Insolvent.

And in the matter of the Act respecting Assign-
ments and Preferences by Insolvent Persons.

I, _____, of the _____ of _____, in the County of
[accountant or as may be the case] make oath and
say as follows:

1. The above named *A.B.* on the _____ day of _____, 19____, made an assignment for the benefit of his creditors under the above mentioned Act to _____ Sheriff of the County of _____ [or to *X.Y.* of the _____ of _____ in the County of _____, accountant or as the case may be], which said assignment is registered in the office of the clerk of the County Court of the County of _____, on the _____ day of _____, 19____.

2. I am a resident of the said County of _____ (*the county in which the debtor resided or carried on business*), at the time of the assignment), and by a resolution of a majority in number and value of the creditors of the said *A.B.*, who have proved claims to the amount of \$100 or upwards, I have been duly appointed assignee of the estate of the above named *A.B.* in substitution for the said sheriff [or by an order of the Judge of the High Court of Justice or of the County Court of the County of _____ (*as the case may be*)], I have been duly appointed assignee of the estate of the above named *A.B.* in substitution for [or to act as assignee jointly with] *X.Y.*, who was by resolution (*or as the case may be*) appointed assignee of the estate of the said *A.B.* in substitution for the said sheriff].

Sworn, &c. (b).

(a) Under R. S. O. 1897 c. 147, s. 8 (2), the affidavit should be registered in the office of the County Court where the assignment is registered (see ss. 8 and 13) and where there are lands of the debtor should also be registered in the proper office: (see s. 8).

(b) To be sworn before any person authorized to administer affidavits in the High Court or before a Justice of the Peace: see R. S. O. c. 147, s. 27.

1465

Notice of
assignment to
be published
in Ontario
Gazette, &c.
(c)

Notice to Creditors.

In the matter of the estate of *A.B.*, of the
of , in the County of [hardware
merchant], Insolvent.

Notice is hereby given that the above named *A.B.*, carry-
ing on the business as a [hardware merchant] in the said
of , has made an assignment under R. S. O. 1897 ch. 147,
of all his estate, credits and effects to of the of
in the County of , for the general benefit of
his creditors.

A meeting of creditors will be held at the office of the
said assignee in the of , on the
day of , 19 , at the hour of o'clock in the fore-
noon, to receive a statement of affairs, to appoint inspectors
and for the ordering of the affairs of the estate generally.

Creditors are requested to file their claims with the
assignee with proofs and particulars as required by the said
Act, on or before the day of such meeting.

And notice is further given that after the day of
, 19 , the assignee will proceed to distribute the
assets of the estate amongst the persons entitled thereto, hav-
ing regard only to the claims of which notice shall then have
been given, and that he will not be liable for the assets or any
part thereof so distributed, to any person or persons of whose
claims he shall not then have had notice.

Dated at , this day of , 19 .

Assignee.

or Solicitors for the Assignee.

(Style: see No. 1464.)

1466

Affidavit of
creditor prov-
ing claim. (d)

I, *C.D.*, of the of in the County of
(residence and addition), make oath and say as follows:—

1. I am a claimant as a creditor herein [or, the duly
authorized agent of *C.D.*, a claimant as a creditor herein, or
a member of the firm of *C.D. & Co.*, claimants, as creditors

(c) See R. S. O. 1897 c. 147, s. 13.

(d) See R. S. O. 1897 c. 147, s. 21.

herein] [*add where the deponent is not himself the claimant, and I have full knowledge of the matters herein deposed to*].

2. The above named *A.B.* (*the insolvent*) is justly and truly indebted to me [*or to the said C.D. or C.D. & Co.*] in the sum of for [*goods supplied to the said A.B. and for promissory notes, &c., as the case may be*], that is to say: (*setting out the particulars: see Nos. 38, et seq.*); [*or as per the statement hereto annexed*].

3. I hold [*or the said C.D., holds, or C. D. & Co., hold*] no security whatever for the said claim or for any part thereof [*or the following security, that is to say (specifying the security), which is of the value of \$.*] (*a*)

Sworn, &c. (*b*)

1467

Proxy. (*c*)

(*Style: see No. 1464.*)

(*Or, In the matter of A.B., an insolvent.*) (*d*)

I, *C.D.*, of , a claimant against the estate of the above named insolvent, [*or, if the proxy be indorsed on or appended to the affidavit of claim, the within (or above) named C.D.*], hereby authorize and empower to represent me at all meetings of creditors in this matter, and to vote and act for me at such meetings in respect to my claim [*where indorsed on or appended to the affidavit of claim, add within (or above) set out*], and in all respects to represent me as if I were present and acting in the premises.

Dated at , the day of , 19 .

C.D.

Witness.

1468

Notice of contestation of claim. (*e*)

(*Style: see No. 1464.*)

To *C.D.* of the of , in the County of .

Take notice that, pursuant to the above mentioned Act, as assignee of the estate and effects of the said *A.B.*, I dispute

(*a*) See R. S. O. 1897 c. 147, s. 20 (*4*).

(*b*) To be sworn before any person authorized to administer affidavits in the High Court or before a Justice of the Peace, or if sworn out of Ontario before a notary public: see R. S. O. 1897 c. 147, s. 27.

(*c*) See R. S. O. 1897 c. 147, s. 19.

(*d*) May be omitted where the proxy is indorsed upon or appended to the affidavit of claim.

(*e*) See R. S. O. 1897 c. 147, s. 22.

your claim to rank upon the estate of the said *A.B.* for the sum of \$, or for any part thereof.

And, further, take notice that your claim to rank on the said estate will be forever barred unless within 30 days after the receipt by you of this notice, or within such further time as the Judge of the County Court of the County of , may on application allow you, bring an action against me as such assignee to establish your said claim and serve on me a copy of the writ of summons, or summons, therein.

Service of such writ of summons, or summons, may be made upon *E.F.*, solicitor of the of in the County of

Dated at , the day of , 19 .

Assignee.
or Solicitors for the Assignee.

In the

Between *C.D.*,

Plaintiff,

and

X.Y., assignee for the benefit of creditors
of *A.B.*, Defendant.

1469
Statement of
claim in action
by creditor to
establish his
claim. (a)

(*Formal parts: see No. 123.*)

1. (*State the claim against A.B., the insolvent, as in any other action.*)

2. On the day of , 19 , the said *A.B.* made an assignment of all his estate, credit and effects for the benefit of his creditors to the defendant.

3. The plaintiff duly filed his claim with the said assignee claiming the sum of \$ as aforesaid (*as the case may be*).

4. On the day of , 19 , the defendant as such assignee served the plaintiff with notice of contestation of the said claim.

The plaintiff claims:

1. A declaration that he is entitled to rank as a creditor upon estate of the said *A.B.* for \$, the amount of his said claim.

2. The costs of this action.

3. Such further or other relief as the nature of the case may require.

(a) See R. S. O. 1897 c. 147, s. 22.

1470

Appointment
for examina-
tion of insol-
vent or his
employees. (a)

In the matter of an assignment for the benefit of creditors made by *A.B.* of the _____ of _____, in the County of _____, [hardware merchant], Insolvent, to *X.Y.*, of the _____ of _____, assignee.

And in the matter of the Act respecting Assignments and Preferences by Insolvent Persons, R. S. O. 1897 c. 147.

Upon the application of *X.Y.*, the above named assignee, I [Master in Ordinary, or Local Master, or special examiner of the Supreme Court of Judicature, or Local Registrar (or Deputy Clerk of the Crown) of the High Court of Justice, or Judge of the County Court of the County of _____, or Official Referee, or other person specially named by order] hereby appoint the _____ day of _____, 19____, at the hour of _____ o'clock in the _____ noon, at my chambers No. _____ street in the _____ of _____ for the examination upon oath of the above named *A.B.* (or as the case may be, naming the person to be examined who is or has been an agent, clerk, servant, officer or employee of the assignor) touching the estate and effects of the said *A.B.*, and as to the property and means he had when the earliest of the debts or liabilities of the said *A.B.* existing at the date of the said assignment made by the said *A.B.* on the _____ day of _____, 19____, was incurred, and as to the property and means the said *A.B.* still has of discharging his debts and liabilities, and as to the disposal he has made of any property since contracting such debt or incurring such liability, and as to any and what debts are owing to him.

Dated at _____ this _____ day of _____, 19____.

Signature of officer.

1471

Notice of motion
for order
authorizing
creditor to
take legal pro-
ceedings. (b)

In the High Court of Justice.

In the matter of *A.B.*, of _____, in the County of _____, merchant, insolvent;

And in the matter of Chapter 147 of the Revised Statutes of Ontario, 1897, entitled "An Act respecting Assignments and Preferences by Insolvent Persons."

(a) See R. S. O. 1897 c. 147, s. 34. Where a partnership had been dissolved, a former employee of the firm was held to be examinable by the assignee of the separate estate of one of the partners, as to the affairs of such estate: *Re Guinane*, 18 P. R. 208.

(b) See R. S. O. 1897 c. 147, s. 9.

(*Formal parts: see No. 403.*)

that a motion will be made on behalf of *C.D.*, a creditor of the above named *A.B.*, for an order authorizing the said *C.D.* to take such proceedings in the name of *E.F.*, assignee of the said *A.B.*, under an assignment made in pursuance of the said Act and dated the day of , 19 , but at the expense and risk of the said *C.D.*, as he may be advised, upon such terms and conditions as to indemnity to the said assignee, or for such other order in the premises, as may be just.

(*Signed*)

Solicitor for the said *C.D.*

To *E.F.*, Esquire,
Assignee of the said *A.B.*

Conditions of Sale.

Conditions of sale of the stock-in-trade and fixtures of the estate of *A.B.*, of

1472

Conditions of
sale of stock-
in-trade.

1. The stock-in-trade and fixtures mentioned in the inventory produced are sold at a rate upon the dollar of the inventory value thereof, without reduction or abatement, except as regards shorts and longs in quantities which are to be adjusted by inventory prices before settlement of purchase.

2. The highest bidder shall be the purchaser, and if any dispute arises as to the last or highest bid, the stock-in-trade and fixtures shall be put up at a former bidding.

3. No person shall retract his bid.

4. The assignee reserves the right to one bid.

5. The purchaser shall at the time of sale sign the annexed agreement for purchase, and shall pay down a deposit of ten per cent. of his purchase money to the assignee, and sufficient therewith to make one-fourth of the purchase money in five days, and the balance in three equal instalments secured, to the satisfaction of the assignee, at two, four and six months, with interest at per cent. per annum. And upon the full completion of such purchase, the purchaser shall be entitled to be put in possession.

6. Time shall be considered of the essence of these conditions, and of the agreement to purchase; and if the purchaser fail to comply with these conditions or any of them, the deposit shall be forfeited to the assignee, who shall be at liberty to re-sell the goods, without notice to the defaulter; and the deficiency, if any, by such re-sale, together with all charges attending the same, or occasioned by the defaulter, are to be made good by the defaulter.

7. The purchaser shall have [five] days to check the inventory and stock-in-trade and fixtures free of expense, after which the purchaser is to assume the rent and taxes and other rates, and to arrange with the landlord of the premises as to tenancy.

Agreement to
purchase
(annexed.)

Agreement to Purchase.

It is hereby declared and agreed by and between (*the assignee*), the vendor of the stock-in-trade and fixtures referred to in the annexed conditions of sale, and (*purchaser*); that the said (*purchaser*) has become the purchaser of the said stock-in-trade and fixtures at the rate of cents on the dollar of the inventory value thereof, and that the sum of \$ has been paid by the said to the said (*assignee*) by way of deposit and in part payment of the purchase money, and that the particulars and conditions of sale shall be taken as the terms of agreement for the sale and purchase respectively and to be observed and fulfilled by the said (*assignee*) and (*purchaser*) respectively in all things.

As witness their hands this day of , 19 .

Witness

CHAPTER XXVI.

ARBITRATION PROCEEDINGS.

In the High Court of Justice.

1473

Title of matter
for proceed-
ings in Court.

In the matter of the arbitration between *A.B.* and *C.D.*
[or as may be].

(*Formal parts: see Nos. 1473 and 403.*)

1474

Notice of mo-
tion to stay
action after a
submission to
arbitration.(a)

on the part of defendant, that all proceedings in this action
may be stayed: the matters in difference therein between the
parties thereto, having been agreed to be referred to arbi-
tration. And take notice (*&c., as in No. 403.*)

(*Title: as in No. 1473.*)

1475

Notice of con-
currence in ap-
pointment of an
arbitrator, or
third arbitra-
tor or umpire.
(b)

Take notice, that you are hereby required, on or before
the day of , 19 , to concur with me in
appointing an arbitrator [*or, umpire, or third arbitrator*],
to whom all matters in difference between us may be referred,
in pursuance of the submission between us dated the
day of , 19 ; to act in the place of *E.F.*, deceased
(*or as may be*). Dated this day of , 19 .

A.B., of (*residence and addition*).

To *C.D.*, of (*residence and addition*).

(*Formal parts: see Nos. 1473 and 403.*)

1476

Notice of mo-
tion for such
appointment
to be made, on
default. (c)

that *G.H.*, of (*residence and addition*), may be appointed
arbitrator [*or, umpire, or, third arbitrator*], to whom all
matters in difference between the said *A.B.* and the above
named *C.D.* may be referred, in pursuance of the submission

(a) See R. S. O. 1897 c. 62, s. 6.

(b) See R. S. O. 1897 c. 62, s. 7.

(c) See R. S. O. 1897 c. 62, s. 7 (2).

between them dated the day of , 19 : the said *G.H.* to act in the place of *E.F.*, deceased (*or as may be*). And take notice (*&c., as in No. 403*).

1477

(*Formal parts: see Nos. 1473 and 403.*)

Notice of motion to enlarge time for making award in a cause. (a)

on the part of the plaintiff (*or as may be*), that the time limited by the order dated the 19 , for *R.B.*, therein named, to make and publish his award in this cause, may be enlarged until the , 19 . And take notice (*&c., as in No. 403*).

1478

Formal parts of an award.

To all to whom these presents shall come: I., *E.F.*, of (*residence and addition*), send greeting:

Whereas (*recite the agreement or submission, or so much of its terms as may be essential to shew the authority of the arbitrator, or umpire, with respect to the subject matter of reference, and the time, power of enlargement, and manner of making the award. Recite the enlargements, if any; and then proceed thus:*)

Now know ye, that I the said *E.F.*, having taken upon myself the burthen of the said arbitration, and having heard and duly considered all the allegations and evidence of the said respective parties of and concerning the said matters in difference, and so referred as aforesaid, do make and publish this my award in writing of and concerning the said matters so referred to me; and do hereby award (*&c.: Conclude with a distinct statement of the arbitrator's decision on all the points referred to him*). In witness thereof I have hereunto set my hand [*If so: and seal*] this day of , 19 .

E.F.

Witness to the signature of the said *E.F.*
[*or, Signed, sealed and delivered by the said*
E.F. in the presence of]:

G.H., of (*residence and addition*).

(*Formal parts: see No. 744.*)

1479

Affidavit of
publication of
an award.

1. On the day of , 19 , I saw *E.F.*,
of (*residence and addition*), sign and publish [*or, sign, seal*
and publish] his award in this matter, dated the day
of , 19 , and now produced and shewn to me, and
marked G.

2. The name or signature “ ,” set and subscribed
to the said award as the party executing the same, is of the
proper handwriting of the said *E.F.*

3. The name and signature “ ,” set and subscribed
to the attestation, written at the foot of the said award, of
the execution thereof by the said *E.F.*, is of my proper hand-
writing.

(*Formal parts: see Nos. 1473 and 403.*)

1480

on the part of the plaintiff (*or as may be*), that the award
dated the , 19 , of *E.F.*, the arbitrator in this cause
[*or, matter*], may be set down for hearing as a special case,
upon the questions thereby submitted for the determination
of this Honourable Court. And take notice (&c., as in No. (b)
403).

Notice of mo-
tion to set
down for hear-
ing a special
case stated by
an arbitrator.
(b)

(*Formal parts: see Nos. 1473 and 400.*)

1481

on the part of the plaintiff (*or as may be*), that the award
dated the , 19 , of *E.F.*, the arbitrator in this
cause [*or, matter*], may be set aside on the following
grounds; namely [*state them; as thus: (1) For that the said
arbitrator (shew corruption, partiality, or secret interest of
the arbitrator, or other misconduct justifying the setting
aside of the award.)*] And take notice (&c., as in No. 400.)

Notice of mo-
tion to set
aside an
award. (c)

(b) See R. S. O. 1897 c. 62, s. 9 (b).

(c) It would seem that a motion to set aside an award can only
now be made on such a ground as the misconduct of the arbitrator.
Objection to his findings must be taken by appeal: see R. S. O. 1897
c. 62, ss. 12 and 14.

(Formal parts: see Nos. 1473 and 403.)

1482

Notice of motion to re-mit matters to reconsideration of arbitrator. (c)

on the part of the said *R.W.*, that the time limited by the submission to arbitration in this matter, for making the award in pursuance thereof, may be enlarged to the , 19 ; and that the matters be remitted to the arbitrator, to supply an accidental omission in one part of his award of the words "taken in due form of law as aforesaid and," and of the word "satisfy"; and for a direction therein that if one of the parties to the said reference should pay the whole of the fees and compensation of the third arbitrator, the other party should repay him a moiety thereof; and also for the re-execution of the said award. And take notice (*&c.*, as in *No. 403*).

1483

Notice of motion by way of appeal from an award.

(May be framed from No. 1481.)

CHAPTER XXVII.

WINDING UP OF COMPANIES. (a)

1484

Petition to
wind up.

In the High Court of Justice.

In the matter of The Winding-up Act, being Chapter 129 of the Revised Statutes of Canada and the Amending Acts.

And in the matter of The Company of
To the Honourable the Judges of the High Court
of Justice.

The petition of

Sheweth as follows:

1. The above mentioned The Company of ,
was incorporated under letters patent under The Ontario
Companies Act (*as the case may be; mentioning the Act un-
der which the company was incorporated*) in or about the
year

[Or, The company, limited, was incorporated
by letters patent under The Ontario Companies Act, or un-
der the provisions of The Companies Act, 1902, of the Do-
minion of Canada, *or as may be*].

2. The head office of the said company is at in the
County of , and Province of (*or as
may be*).

3. The objects for which the said company was incor-
porated were (*set out shortly the objects*).

(a) A joint stock company may be wound up under the Ontario Winding up Act, R. S. O. 1897, c. 222, if the company be one within the control of the Ontario Legislature, for any cause justifying winding up other than insolvency. If the company is insolvent the proceedings to wind up must be had under the Dominion Winding up Act, R. S. C. c. 129 and amendments thereto, that Act being in the nature of an Insolvency Act, and overruling the provisions of the Provincial Act: *Re Iron Clay Manufacturing Co* (1890), 19 O. R. 441; *Shoolbred v. Clark* (1890), 17 S. C. R. 265; *Re Union Fire Ins. Co.* (1887), (1890), 14 O. R. 618, 16 A. R. 161, 17 S. C. R. 265.

As to cases in which a company may be wound up: see Mas-
ten's Company Law, p. 578.

4. The nominal capital stock of the said company is \$, divided into shares, of which shares are said to be subscribed, and shares are said to be fully paid up [or partly paid up, *as may be*, or the petitioner is ignorant as to how many of said shares have been subscribed for, or what amount has been called up thereon.]

5. Immediately after the incorporation of the said company, it commenced to carry on business and has continued to carry on business until (*state time*).

6. The petitioner is a creditor of the said company for the sum of \$, and his claim is overdue and unpaid, and the said company is also indebted to divers other persons and companies in large amounts which are overdue and unpaid.

7. The said company by its president and directors has admitted its inability to pay the claim of the petitioner, or to meet the other liabilities of the said company, and that the said company is insolvent (*or state the other facts shewing insolvency of company*).

The petitioner therefore prays:

1. That it may be declared that the said company is a corporation within the meaning of the Winding up Act of the Dominion of Canada, and the amendments thereto.

2. And that the said company may be ordered to be wound up under the provisions of the said Acts.

3. That a proper person may be appointed provisional liquidator of the said company to act until a permanent liquidator shall be appointed.

4. That it may be referred to [the Master in Ordinary] of this Honourable Court to appoint a fit and proper person to be permanent liquidator of the said company, and that the said [Master] may be directed to take all necessary steps and may be empowered to exercise all such powers as are conferred upon this Honourable Court or any Judge thereof by the said Winding up Act and amendments thereto, as to this Honourable Court may seem proper for the winding up of the said company.

5. That the costs of this petition and of the proceedings thereon may be ordered to be taxed and paid out of the assets of the said company.

6. And that the petitioner may have such further or other relief as to this Honourable Court may seem just.

(Formal parts: see No. 1484.)

1485

Another form.
Petition to
wind up.

1. The above mentioned The Company of
was incorporated under letters patent under (or as the case
may be; mentioning the Act) in or about the year for
the purpose of (*stating in general terms the object for which*
the company was incorporated).

2. The head office of the said company is in the
of and Province of Ontario.

3. Immediately after its incorporation the said company
was organized and proceeded to carry on business until about
the day of , 19 .

4. The affairs of the said company have become much
involved, and it has become unable to meet its liabilities and
is in fact insolvent.

5. On the day of , 19 , the petitioner
in an action in this Court (*or as the case may be*) recovered
judgment against the said company for the sum of \$
and costs, which were taxed at the sum of \$, and
writs of execution were on the day of ,
19 , placed in the hands of the Sheriff of the County of
 , against the goods and lands of the said Com-
pany whereby the Sheriff was directed to levy the amount
of the said judgment, and the said writs are still in the hands
of the said Sheriff in full force and unsatisfied.

6. Judgments have also been recovered against the said
company by other creditors thereof, and writs of execution
thereunder have been placed in the hands of the said Sheriff
where they now remain in full force and unsatisfied, and
other actions are pending or threatened against the said com-
pany by persons claiming to be creditors thereof.

7. The said Sheriff has since, about the day of ,
been in possession of the property of the company, and is now

in possession thereof under the writs of execution in his hands.

8. The petitioner has been unable to obtain any statement of the assets and liabilities of the said company, and desires an investigation thereof (*or as the case may be*).

9. The petitioner therefore prays:

1. That it may be declared that the above company is a corporation to which the provisions of The Winding up Act and amendments are applicable.

2. That it may be declared that the said company ought to be wound up under the provisions of the said Acts, and for an order directing a winding up of the said company accordingly.

3. That an order may be made appointing a provisional liquidator of the estate and effects of the said company, and referring it to the Master in Ordinary of the Supreme Court of Judicature to appoint a permanent liquidator of the said company, and empowering and directing the said Master to take all necessary steps and conferring upon the said Master all the powers conferred upon the Court by The Winding up Act and amendments thereto for the purpose of the winding up of the said company.

4. That for the purposes aforesaid all proper directions may be given, accounts taken, and inquiries made.

5. And that the petitioner may have such further or other relief as may seem meet, and as the case may require.

And the petitioner will ever pray, &c.

1486

Notice of presentation to be indorsed on petition.

In the High Court of Justice.

In the matter, &c. (*see No. 1484*).

Take notice that the within petition will be presented to this Honourable Court at Osgoode Hall, Toronto, on the day of _____, at _____ o'clock in the forenoon, or so soon thereafter as counsel can be heard. And take notice that in support thereof will be read (*set out affidavits, &c., to be used*).

And take notice that unless you then and there attend, such order may be made in your absence as to the Court may seem proper.

Dated this day of , 19 .

To (*name of company*)
and their solicitors or agents. }

X.Y.,
Solicitors for Petitioners.

—
This petition is filed by Messrs. , of No. street, in the County of , solicitors for the within named petitioners, who carry on business at

1487
Indorsement
of petition.

(*Formal parts: see No. 1484.*)

I, , of the , in the County of merchant, make oath and say:

1488
Affidavit in
support. (a)

1. I am the petitioner in this matter.

2. That such of the statements in the petition now produced and shewn to me and marked A., as relate to my own acts and deeds, are true, and such of the said statements as relate to the acts and deeds of any other person or persons or body corporate I believe to be true.

Sworn, &c.

(*Formal parts: see Nos. 908 and 1484.*)

1. Upon the petition of J.M., F.G., J.L. and J.V., of the City of Toronto, in the County of York, trading under the name, style, and firm of J.M. & Company, presented unto this Court this day by counsel for the petitioner in presence of counsel for the Company, Toronto, upon opening up the matter, upon hearing read the said petition, the affidavits of F.G., filed, and the exhibits therein referred to, and upon hearing what was alleged by counsel aforesaid [*if so, and counsel aforesaid consenting hereto*].

1489
Winding up
order under
Dominion
Act.

(a) The affidavit of the petitioner should be supplemented by such additional evidence as is obtainable to show the liability of the company to be wound up, and to corroborate the status of the petitioner and also of the fitness of the proposed provisional liquidator.

2. This court doth declare that the said the Company of _____, is an incorporated trading company within the provisions of the said Act, and is insolvent and liable to be wound up by this Court under the provisions of the said Act and amendments thereto, and doth order that the said company shall be wound up by this Court under the provisions of the said Act and the amendments thereto.

(Formal parts: see No. 1489.)

1490
Order appoint-
ing a pro-
visional liqui-
dator and
delegating
to the Master
powers for
winding up.
a)

Upon motion made unto this Court this day by Mr. _____, counsel for _____, the petitioning creditor herein, in presence of counsel for _____, creditors of the said company [no one appearing for the said company, although duly notified as appears by petition, notice of presentation thereof and admission of service], upon hearing read the order made the _____ day of _____ for the winding up of the said company, and the papers and documents read and referred to on the application for the said order; and upon hearing what was alleged by counsel aforesaid:

1. This Court doth order that _____ be and [he] is hereby appointed provisional liquidator of the estate and effects of the above named company, upon his giving security to the satisfaction of _____ for the due performance of his duties.

2. And this Court doth further order that it be referred to the [Master in Ordinary] to appoint a permanent liquidator or liquidators of the estate and effects of the said above named company, and to take all necessary proceedings for and in connection with the winding up of the said company and the remuneration to be paid to the liquidator or liquidators.

3. And this Court doth in pursuance and by virtue of the statute in that behalf hereby delegate to the said [Master], all such powers as are conferred upon the Court by the Winding up Act, and amending Acts, as may be necessary for the said winding up of the said company.

5. And this Court doth further order that the costs of the said petition and order for winding up, and of this motion be taxed and be paid by the said permanent liquidator out of the assets of the said company which shall come to his hands.

(a) This order may be made upon the motion for a winding up order.

1491

This Court doth order that _____ of _____, be and he is hereby appointed interim liquidator of the estate and effects of the said company without security until the appointment of a permanent liquidator.

Clause for appointment of interim liquidator without security.

1492

This Court doth further order that the powers of the said provisional liquidator be and they are hereby restricted to the following acts, namely, to carrying on and continuing the business of the said company so far as may be necessary for carrying out and completing existing contracts, and [keeping the company's furnaces in blast], and for that purpose to raise a sum of money not exceeding _____ per week, at a rate not exceeding _____ per cent. per annum and the usual banker's commission, by the sale of or upon the security of the company's assets, or to make such advances himself if he shall think fit, and this Court doth further order that for any advance which the said (*provisional liquidator*) shall make for the purposes aforesaid, he shall have a first charge upon the assets and undertaking of the said company next after any incumbrances now existing thereon.

Special provision in winding up order appointing provisional liquidator.

1493

This Court doth order that the said (*provisional liquidator*) be at liberty until the Court shall see fit to make further order to the contrary to carry on the business of the said company so far as may be necessary to complete contracts already made by the said company, and to enter into such new contracts as may be necessary to continue the business of the said company, so as to enable the same and the property and assets thereof to be sold as a going concern, and for that purpose to use up the stock and other materials of the said company in the liquidator's possession, but so that the price of such new contracts shall not exceed \$ _____, and shall not take more than six months to complete.

Another form of order for carrying on business.

1494

This Court doth further order that for the purpose of carrying on the business of the said company as aforesaid, the said (*provisional liquidator*) be at liberty to borrow immediately or from time to time, such sum or sums as he may

Another form of order authorizing borrowing of money by provisional liquidator.

require for carrying on the said business, and for payment of current expenses, and for the completion of work now in course of execution at _____, not exceeding in the whole \$ _____, the rate of interest on moneys so to be borrowed not to exceed _____ per cent. per annum.

And this Court doth further order that all moneys so to be borrowed, with the interest for the same, do constitute a first charge on all the property and assets of the said company next after any charges now existing thereon.

And this Court doth further order that the said (*provisional liquidator*) do execute on behalf of the company such instruments as may be necessary for perfecting such charges.

And this Court doth further order that the costs of this application and of carrying out the provisions of this order, be fixed and paid by the said (*provisional liquidator*) out of the assets of the company.

1495

(*Formal parts: see No. 400.*)

Notice of motion for discharge of provisional liquidator and his bond.

for an order discharging A.B., the provisional liquidator of the said company, from his office as such provisional liquidator, and ordering the bond given by him as security for the due performance of his duty to be delivered up by the Accountant of the Supreme Court of Judicature to be cancelled, and directing the costs of the said provisional liquidator to be taxed and paid out of the assets of the said company as and when the said Judge may direct.

1496

(*Formal parts: see Nos. 908 and 1484.*)

Appointment of solicitor by liquidator.

I hereby appoint _____, of the City of _____, solicitor, to be my solicitor in this matter.

Dated, &c.

(*Signature*)

Liquidator of the above named company.

Master's approval.

I hereby sanction the appointment by the liquidator of a solicitor [*or of Mr. W., to be his solicitor*] to assist him in the performance of his duties.

(*Signature*).

[Master in Ordinary.]

(*Formal parts: see Nos. 908 and 1484.*)

1. Upon the application of the solicitor for the liquidator, in presence of counsel for _____, creditors, and shareholders, and of _____, creditors, and shareholders, in person. **1497**
Order to call meeting of creditors and contributories.

2. It is ordered that a meeting of the creditors of the said company be summoned and held for the purpose of appointing a person or persons not exceeding four, to represent them in order that the wishes of the creditors of the said company may be ascertained through the said representatives at such times and in such manner as may hereafter be directed.

3. And it is further ordered that a separate meeting of the contributories and shareholders of the said company be also summoned and held for the purpose of appointing a person or persons, not exceeding four, in order that the wishes of the said contributories and shareholders may be ascertained through the said representatives at such times and in such manner as may hereafter be directed.

4. And it is further ordered that the said meetings be summoned by _____, who is hereby appointed to act as chairman thereof, and to report the result of the said meetings to _____, and to make a report to him of the lists of creditors, contributories and shareholders, who shall have voted at the said meetings respectively if hereafter required.

5. And it is further ordered that the proof of the claims of contributories, shareholders and creditors, who shall claim the right to vote at said meetings, shall be to the satisfaction of the chairman thereof.

6. And it is further ordered that _____, may act as secretary of the said meetings, and record the proceedings, and it is further ordered that the mode of notifying the creditors, contributories and shareholders of the said meetings be as determined by the said convener or chairman.

7. And it is further ordered that the costs and expenses of and incidental to this application and order, and to the summoning and holding of the said meetings, be costs in this matter to the said liquidator, and be taxed and allowed to the said liquidator on passing his accounts.

(*May be framed from No. 936.*)

1498
Notice to creditors to send in claims.

1499

Liquidator's
bond.

Know all men by these presents, that we (*liquidator and sureties*), are jointly and severally held and firmly bound unto the Accountant of the Supreme Court of Judicature for Ontario, his successors and assigns, in the penal sum of (a) _____ for which payment well and truly to be made we jointly and severally bind ourselves, our heirs, executors and administrators [and successors], firmly by these presents.

Sealed with our seal and dated this _____ day of _____, A.D. 19 ____.

Whereas by an order made by the High Court of Justice in the matter of _____, and bearing date the _____ day it was referred to [the Master in Ordinary of the said Court] to appoint a fit and proper person to be permanent liquidator of the said _____ company upon his giving security to the satisfaction of the said Master for the due performance of his duty. And whereas the said [Master] has appointed the said _____ [permanent] liquidator of the said company subject to his giving security for the due performance of his duty.

And whereas the said Master has approved of the above written obligation with the under written condition as a proper security to be entered into by the said (*liquidator*) pursuant to the said order and in testimony thereof has signed an allowance in the margin hereof (b).

Now the condition of the above obligation is such that if the above bounden (*liquidator*), his executors or administrators, or any of them, do and shall duly and regularly keep and render all accounts which, pursuant to the said Winding up Act of the Dominion of Canada and the Acts amending the same or any other Acts of the Parliament of Canada, or which by any Rules or orders of Court ought to be kept and rendered by him as liquidator of the said company, and do and shall account for and duly and regularly pay over all and every such sum and sums of money as shall come into his hands as such liquidator as aforesaid at such time or times and in such manner as the said Act or Acts or Rules is directed or as the said Court or the said [Master in Ordinary] shall from time to time direct, and shall also in all other respects

(a) The penalty will be regulated by the value of the property of the company which will come to the hands of the liquidator.

(b) In the case of a provisional liquidator appointed by the Judge without a reference subject to his giving security, the preceding paragraphs will need to be altered to suit the facts.

faithfully fulfil, perform and discharge all the duties of his said office, and duly perform the trusts reposed in him in respect thereof, and shall in all things abide by, observe and perform the orders and directions of the said Court and of the said [Master in Ordinary] touching or concerning the property of the said company and the winding up thereof, then the above obligation shall be void, otherwise the same shall be and remain in full force and virtue.

It is agreed by the above bounden obligors respectively, with the aforesaid obligee, his successors and assigns, that a certificate under the hand of the said [Master in Ordinary] of the amount for which the said is liable as such liquidator shall be sufficient evidence as against the said obligors, and all persons claiming under them or either of them, of the amount of the indebtedness of the said liquidator.

(*Formal parts: see Nos. 744 and 1484.*)

1. A.B. of has been settled on the list of contributories of the above named company in respect of shares therein, and by an order made in this matter, dated a call amounting to has been made upon the said A.B. in respect of the said shares (*or shew how otherwise A.B. is indebted to the company*).

1500
Affidavit of
liquidator as
to proposed
compromise.

2. The said A.B. has offered to me to pay the sum of \$ by way of compromise of the said claim of the said company against him and in discharge of his liability as a [contributory or debtor] of the said company.

3. I have made careful inquiry into the affairs of the said A.B. (*shew what steps taken with this view*) and I verily believe that [the said A.B. is insolvent and unable to pay his debts in full, or that it would be extremely difficult if not impossible to recover by legal proceedings, or otherwise the amount of the said claim of the said company against him, or as much as the amount now offered by him, by way of compromise].

4. To the best of my knowledge and belief it will be for the benefit of the said company to accept the said proposed compromise.

(*Formal parts: see No. 908.*)

1501

Order confirming compromise.

Upon the application of the liquidator and upon hearing read (*state evidence*).

It is ordered that the said liquidator be and he is hereby authorized to accept the sum of \$ from the said *A.B.* in full of the liability of the said *A.B.* as [a contributory or debtor] to the said company and upon payment of the said sum to release and discharge the said *A.B.* from all further liability to the said company, by instrument under the seal of the said company to be settled by [the Master in Ordinary] in case the parties differ.

Formal parts: see No. 908.

1502

Another form.

It is ordered that the conditional agreement entered into between the liquidator and *A.B.* and dated the day of for the compromise of the debt of \$ of the said *A.B.* to the said company be confirmed and carried into effect, and that the said liquidator be authorized to execute under the seal of the said company all documents necessary to give due effect to the said agreement such instruments to be settled by the [Master in Ordinary] in case the parties differ about the same.

(*Title of matter: see No. 1484.*)

1503

Notice of passing liquidator's final account, &c.

Take notice that I have appointed the day of 19 , at the hour of of the clock in the at my chambers, Osgoode Hall, in the City of Toronto, to pass the liquidator's final accounts, declare the final dividend, settle the liquidator's remuneration, direct taxation of costs and settle my final report herein.

Dated, &c.

(*Signature*)

[Master in Ordinary.]

1504

Order discharging liquidator.

(*Formal parts: see No. 908.*)

Upon the application of the liquidator herein, and upon hearing read the proceedings and evidence in this matter, and it appearing that the said has duly accounted for

all moneys received by him and has paid all accounts and dividends ordered [except certain sums amounting to \$ mentioned in his accounts herein, and for which it appears he has issued cheques to the several persons mentioned in the said accounts as together entitled to the said sum.]

1. It is ordered that the said be and he is hereby discharged from his office of liquidator of the said company, and from all further liability as such liquidator.

2. It is further ordered that the bond given by the said to the Accountant of the Supreme Court of Judicature of Ontario for the due performance of his duty as such liquidator be delivered up to the said and that the same be cancelled and discharged.

3. And it is further ordered that in case the cheques for the several sums amounting to the said sum of \$ issued by the said liquidator be not presented for payment to the bank of , within three years from the date of this order, the said bank shall at the end of the said three years forthwith pay over to the same or so much thereof as shall be then remaining in the said bank unclaimed, with the accrued interest thereon, to the Minister of Finance, and Receiver-General of Canada, pursuant to the [94th section of the said Winding-up Act, chapter 129, of the Revised Statutes of Canada, or the statute in that behalf], and a copy of this order is to be forthwith served upon the said bank.

(Formal parts: see No. 908.)

1. This Court doth order that *A.B.* be and he is hereby appointed liquidator of the above mentioned company in the place and stead of *C.D.* deceased.

1505
Order appoint-
ing official
liquidator in
place of one
deceased.

2. And this Court doth further order that the said *E.F.* and *G.H.*, the legal personal representative of the said *C.D.* do forthwith bring in and pass before [the Master in Ordinary] the final account of the said *C.D.* as liquidator of the said company, and do pay the balance which shall be certified to be due upon the footing of such account into (*name of bank*) at its office in the [City of Toronto], to the credit of (*name the account*) as directed by the order in this matter dated the day of

3. And this Court doth further order that upon payment in of such balance as aforesaid the bond given by the said

C.D. to the Accountant of the Supreme Court of Judicature for Ontario, for the due performance of his duties be cancelled by the said Accountant and delivered up to the said *E.F.* and *G.H.*

(*Formal parts: see No. 400 or 403.*)

1506

Notice of motion for leave to proceed with distress or action. (a)

that notwithstanding the order made in this matter dated, &c., directing the above named company to be wound up, [*A.B.* the plaintiff in action of *B. v. the C. Company*, brought in this Honourable Court may be at liberty to proceed with the said action, he undertaking not to enforce any judgment he may obtain in the said action without the leave of the Court or a Judge [*or, that A.B. may be at liberty to levy a distress upon all the goods and chattels of the above named company now lying or being on (state premises) for months' rents due to him in respect of the said premises from the said company*] and that the costs of the applicant may be ordered to be added to and form part of his costs of the said action [*or distress*] and that the costs of the liquidator and of the above mentioned company may be ordered to be costs of the said winding of proceedings.

SECTION II.—MEETINGS OF CREDITORS AND CONTRIBUTORIES.

[*Title: see No. 1484.*]

1507

Notice, or advertisement of meeting of creditors, or contributories.

Notice is hereby given that (*name of Judge or officer*) has directed a meeting of the creditors [*or contributories*] of the above named company to be summoned pursuant to the above statute for the purpose of ascertaining their wishes as to [*state the matter*] and that such meeting will be held on the day of 19, at o'clock in the noon, at (*state place of meeting*) at which time and place all the creditors [*or, contributories*] of the said company are requested to attend. [*If so the said (Judge or officer) has appointed A.B. of to act as chairman of the said meeting*].

Dated this day of 19 .

(*Signature*)

Liquidator of the said Company.

(a) Where, as is now generally the case, the winding up of the company is delegated by the Court to the Master in Ordinary, motions such as this will be made before him.

(Title: see No. 1484).

C.D. of is hereby appointed to act as chairman **1508**
of the meeting of creditors [or contributories] to be held on **Appointment**
(state date) for the purpose of ascertaining the wishes of the **of chairman.**
said creditors [or contributories] as to (state matter) and
to report the result of the meeting to (Judge or officer).

Dated, &c.

(Signature of Judge or Officer making
appointment.)

(Title: see No. 1484.)

I C.D., the person appointed by to act as chairman **1509**
of the meeting of creditors [or contributories] of the above **Report of**
named company summoned by advertisement [or notice] **chairman of**
dated the day of do hereby report to (Judge or **result of meet-**
officer) that the following was the result of the said meeting. **ing.**

The said meeting was attended personally or by proxy by
creditors to whom debts against the said company have
been allowed amounting in the aggregate to \$. [or by
contributories holding in the aggregate shares in the
said company and entitled by the rules and regulations of
the said company to the number of votes hereinafter men-
tioned].

The question submitted to the meeting was (state it
shortly).

The said meeting was unanimously of the opinion that
(state the result) [or the result of the voting upon such
question was as follows.

The undermentioned creditors voted in favour of the
said proposal being adopted and carried into effect.

Name of Creditor (or Contributory).	Address.	Amount of debt (or number of shares).	No. of votes con- ferred on each con- tributory by rules of company.

The undermentioned creditors [*or contributories*] voted against the said proposal being adopted and carried into effect.

(*Set out list as above.*)

Dated, &c.

(*Signature*)

Chairman.

(*Formal parts: see No. 744.*)

1510

Affidavit in support of list of contributories.

1. The paper writing now shewn to me marked A. contains a list of the contributories of the said company made out by me from the books and papers of the said company, together with their respective addresses and the number of shares to be attributed to each, and those who are contributories in their own right are included in the first part of the said Exhibit A., and those who are contributories as representatives of or liable for the debts of others are included in the second part of the said above list, and such list is to the best of my knowledge, information and belief, a true and accurate list of the contributories of the said company so far as I have been able to make out, and ascertain the same.

2. That now shewn to me marked B. is a statement of the assets and liabilities of the said company which from my knowledge of the affairs of the said company, I believe to be true and correct.

3. The whole amount appearing by the said Exhibit A. to be unpaid upon the shares held by the several persons named as contributories in the said list is now due and payable according to the rules and regulations of the said company.

4. That it will be necessary for the purpose of liquidating the liabilities of the said company that the whole amount appearing to be unpaid upon the shares held by the several persons named in the said Exhibit A., as shewn in the said exhibit, should be forthwith paid by the several persons named in the said list as respectively liable for the same.

(Title: see No. 1484.)

This list of contributories marked A. was produced and shewn to (*deponent*) and is the list referred to in his affidavit sworn before me this day of , 19 .

1511

List of contributories referred to in the foregoing affidavit.

(Signature)

(Commissioner for taking affidavits.)

First Part.—List of contributories in their own right.

No.	Name.	Address.	In what character included.	Number of shares.	Amount unpaid.

Second Part.—List of contributories as being representatives of, or liable for the debts of others.

No.	Name.	Address.	In what character included.	Number of shares.	Amount unpaid.

(Formal parts: see Nos. 1484 and 403.)

1512

Upon the application of the liquidator of the above named company, and upon hearing read the affidavit this day filed.

Summons to contributories to shew cause why they should not be credited on list of contributories.

1. It is ordered that each of the parties named in the list of contributories this day filed in the office of the [Master in Ordinary], do attend before the said [Master in Ordinary] at his Chambers at Osgoode Hall, in the City of Toronto,] on the day of , 19 , at the hour of of the clock in the noon, and shew cause why they respectively should not be settled upon the list of contributories, and held to be a shareholder and contributory of the said company for the number of shares and for the amount due thereon as set out in the list so filed.

2. And it is further ordered that in case any of the said persons named in the said list shall desire to contest the entry of his name on the said list or his liability in respect

to the said number of shares, or in respect of the amount with which he is claimed to be chargeable, shall file in the office of the said [Master in Ordinary at Osgoode Hall, Toronto], and also serve on the said liquidator or his solicitor on or before the day of , 19 , a statement in writing setting forth his grounds of objection and defence to the said list, and to his being settled on the said list [and liable] as a contributory as aforesaid.

3. And it is further ordered that in case any of the said persons named on the said list and served herewith shall refuse or neglect to serve a statement of objections and defence as aforesaid or to attend before the [Master in Ordinary] at the time and place aforesaid, each party so making default shall be held to have admitted his liability as such contributory for the amount claimed against him, and that the said liquidator shall be entitled to judgment therefor and to issue proper writs of execution against the goods and chattels and lands of each of the said contributories, or such process as may be awarded for the collection of the said amounts, and the said liquidator shall be entitled to take all other necessary proceedings against the said party without any further notice to, or served upon, the said party so refusing or neglecting as aforesaid.

(Title: see No. 1484.)

1513

Master's report on list of contributories.

Pursuant to the winding up order herein dated the day of 19 , whereby it was referred to me to settle the list of contributories of the above named company having been attended by the solicitor for the liquidator, the solicitor for the several contributories mentioned in schedule A. hereto excepting and who appeared before me in person and the several contributories mentioned in schedule B. hereto failing to attend before me although duly served with the winding up order and my summons dated the day issued pursuant thereto, as has been made to appear to my satisfaction.

1. I find and certify that the several persons named in the schedule A. are contributories in their own right, in respect of the number of shares and for the amounts set opposite their respective names in the said schedule A.

2. I further find and certify that the several persons named in schedule B. hereto are contributories as representa-

tives of or liable for the debts of others as specified in the said schedule B., in respect of the number of shares and for the amounts set opposite their respective names in the said schedule B.

3. And I make this report reserving the settlement of any further or additional list of other contributories for another report.

(Signature)
[Master in Ordinary.]

(Formal parts: see No. 908.)

1514

1. Upon the application of the liquidator to place *A.B.* on the list of contributories made this day in presence of the solicitor for the said *A.B.*, and upon hearing read, &c.

Order refusing application to place a person on list of contributories.

2. It is ordered that the application be and the same is hereby dismissed.

3. It is further ordered that the costs of the said *A.B.* of this application to be taxed be paid by the said liquidator out of the assets of the said company.

(Formal parts: see No. 908.)

1515

1. It is ordered that the name of the said (*applicant*) be and the same is hereby struck off the list of the contributories of the said company.

Order striking out name from list of contributories.

2. It is further ordered (*as to costs, see preceding form*).

SECTION III.—CALLS.

(Formal parts: see No. 744.)

1516

1. I have in the schedule now shewn to me marked A. set forth a true statement shewing the amount due in respect of the debts proved and admitted against the said company, and also the estimated amount of the costs, charges, and expenses of and incidental to the winding up of the said company, and which in the aggregate amount to \$

Affidavit of liquidator as to necessity for call.

2. I have also in the said schedule A. set forth a true statement of the assets in hand belonging to the said company, which amount to the sum of \$ and no more.

3. There are no other assets belonging to the said company to the best of my knowledge and belief except the amounts due from the contributories of the said company, as shewn in the list of contributories settled by the [Master in Ordinary], and to the best of my information and belief it will be impossible to realize in respect of the said last mentioned amounts more than \$ or thereabouts.

4. For the purpose of satisfying the debts and liabilities of the said company and of paying the costs, charges and expenses of and incidental to the winding up thereof, I believe the sum of \$ will be required in addition to the amount of the assets now in hand as mentioned in the said schedule A.

5. In order to provide the said sum of \$ it is necessary to make a call upon the several persons who are settled on the list of contributories as before mentioned, and having regard to the probability that some of the contributories will partly or wholly fail to pay the amount of such call, I believe that in order to realize the amount required as aforesaid it is necessary that a call of \$ per share [*or* per cent.] should be made.

(*Formal parts: see No. 908.*)

1517

Order author-
izing call.

Upon the application of the liquidator of the above named company, and upon reading the affidavit of the said liquidator filed and the exhibit therein referred to and upon hearing counsel for the said liquidator.

1. It is ordered that the liquidator be and he is hereby authorized to make a call of \$ per share [*or* per cent.], on all the contributories of the said company (*or as the case may be*).

2. And it is ordered that the said contributories do respectively on or before the day of pay to the said liquidator the amount which shall be due from them respectively in respect of such call.

SECTION IV.—CREDITORS' CLAIMS.

See Form No. 936.

1518

Advertise-
ment for credi-
tors.

See Forms Nos. 939 to 947.

1519

Affidavit
proving claim.

CHAPTER XXVIII.

PROCEEDINGS UNDER "THE DEVOLUTION OF ESTATES ACT."

1520

Requisitions
of Official
Guardian to
procure his
assent to sale.

Before an executor or administrator takes proceedings under "The Devolution of Estates Act" for the sale of real estate in which an infant is interested (a) he must:—

1. Give to the Official Guardian notice of the intention to sell (b).
2. Produce the probate or letters of administration to, and leave a copy with, the Official Guardian.
3. Produce evidence, by affidavits, of the next of kin and their respective ages (c).
4. Produce evidence of the value of the land for the purpose of sale. The testimony of independent, experienced and reliable persons is essential (d).

5. If the land is under mortgage produce a statement from the mortgagee of the amount due on his mortgage, if it can be got; if not, some reliable evidence of the amount due.

If negotiations for sale are pending the Official Guardian will, upon the above evidence being furnished him, assent to the sale if a proper one. If no negotiations are pending he will assent to a sale to be made.

Before a sale can be completed it is necessary for the personal representative to:—

6. Advertise for creditors in the usual way, and prove the advertisement to the Official Guardian (e). Produce the Sheriff's certificate as to executions against the deceased. All claims, both paid and unpaid, and all known to the executor or administrator, whether sent in or not, must be exhibited to the Official Guardian (f);

7. Prove the amount of the personal estate, and shew what disposition, if any, has been made of it, and why the sale of

(a) See Rule 971, which provides that before an executor or administrator takes proceedings under The Devolution of Estates Act for the sale of real estate in which an infant is concerned, he shall give to the Official Guardian or other officer charged with the duties referred to in the 8th section of the said Act, notice of the intention to sell, and shall not be entitled to any expenses incurred before giving such notice. See also R. S. O. 1897, c. 127, s. 8.

(b) This may be given either by formal notice or by letter.

(c) See Form No. 1521.

(d) The affidavit may be by such persons as a Master would require to make an affidavit upon which to fix a reserved bid: see Form No. 1003.

(e) See Form No. 936.

(f) See Form No. 949.

the land is necessary, e.g., for payment of debts, or for the distribution of the estate among the beneficiaries (*g*).

8. The widow must elect between her dower and her share under the Act, and the deed of election must be produced (*h*). If the land was under mortgage, shew when it was made, and whether it was for purchase money or for a loan, as dower is to be computed according to the circumstances.

9. The purchase money must be paid into the Canadian Bank of Commerce, at the principal office or any branch office, to the joint credit of the executor or administrator and the Official Guardian.

10. The draft conveyance must be approved by the Official Guardian, and he will, before delivery, mark his assent on the conveyance.

The Devolution of Estates Act.

In the matter of the estate of *A.B.*, of the
of in the County of and Province
of Ontario (*occupation of deceased*).

(*Formal parts: see No. 744.*)

1. I am [the lawful widow] of the above named *A.B.*, deceased, who died at the said of , on [or about] the day of , A.D. 19 , intestate [or having first made his last will and testament bearing date the day of , A.D. 19 .]

2. The said *A.B.* left him surviving, myself [*or C.B.*] his lawful widow and children, his lawful and only heirs at law and next of kin.

3. of the said children are now of the full age of twenty-one years or upwards. Their names and addresses are as follows:—

E.B., address (*as the case may be*).

D.B. (now the wife of *X.Y.*, address (*as the case may be*),

&c., &c.

4. The other children of the said *A.B.* are infants under the age of twenty-one years, and they are all residing with me [*or with the said C.B.*, the widow of the said *A.B.*, *or as the case may be*] at . Their names are as follows:

F.B., who was born on the day of , 19 .

J.B., who was born on the day of , 19 .

&c., &c.

1521

Affidavit to procure assent of Official Guardian to the sale of real estate of a deceased person by his legal representatives.

Names and addresses of adults.

Name and ages of infants.

(*g*) See Form No. 1522.

(*h*) See Form No. 1523.

5. By deed poll bearing date the day of , 19 , I did elect to take the estate and interest to which I am entitled under the provisions of *The Devolution of Estates Act* in the lands of the said A.B., deceased, which remained undisposed of at the time of his death in lieu of all my claims to dower in respect of any lands of which he was at any time seised, or to which at the time of his death he was beneficially entitled.

[6. *If so:* The said deed was registered as I verily believe in the Registry Office for the County of , on the day of , 19 , and a duplicate thereof is now shewn to me and marked as Exhibit "B" to this affidavit.]

(Where the widow is also the legal representative of deceased, the above and the following affidavit may be combined in one affidavit.)

1522

Affidavit by legal representative as to particulars of estate of deceased.

(Formal parts: see No. 744.)

1. On the day of , letters of administration to the estate and effects [or letters probate of the will] of the said A.B. were granted to me by the Surrogate Court of the County of of .

2. A true copy of the said [letters] is now shewn to me and marked as Exhibit "A" hereto.

3. The said A.B. at the time of his death was possessed of personal property, which for the purpose of the application for letters of administration [or probate of his will] was valued at the sum of \$.

(State what disposition, if any, has been made of it, according to the facts.)

4. The said A.B. at the time of his death was the owner in fee simple of the following lands, which for the purpose of the said application for [letters of administration, or as the case may be] were valued at the sums respectively herein-after mentioned, namely:—

(Give here a list of the lands by a short description, adding in each case, valued as aforesaid at the sum of \$)

5. The said lands were at the time of the death of the said A.B., and still are, [free from incumbrance, or subject to a mortgage, giving the particulars thereof, as may be necessary].

6. (State the debts paid by the executor or administrator and unpaid, as may be convenient according to the circumstances. Form 949 may be followed as a guide; or if the

*debts are inconsiderable some such statement as the following may be made:—*The said A.B. left no debts at the time of his death with the exception of a few small accounts for household expenses and expenses incurred during his last illness, all of which together with his funeral expenses have been paid by me, and a list thereof is hereto annexed and I hold vouchers for the payment of the same.

7. *If so:* The said letters of administration of the estate [or the letters probate of the will] of the said A.B. have been duly registered in the Registry Office for the County of _____, as appears by the Deputy Registrar's certificate indorsed upon the original of said letters.

8. *(Any matters material to the consideration of the question of a sale of the lands should be stated, such as their description or condition, state of clearing or repair, charges thereon, &c., &c., and the reasons why the proposed sale is necessary.*

9. *If so:* On or about the _____ day of _____, 19____, an offer in writing, now shewn to me and marked Exhibit "C" to this affidavit was received by me from _____ for the purchase of (*mention the land*). I consider that in the interests of the said infants [*where the widow makes the affidavit, add and of myself*] that the said offer should be accepted [*where the widow makes the affidavit, and if so, add:—*and so far as I am concerned and have any power or authority to do so I desire to accept the said offer].

Devolution of Estates Act.

In the matter of the estate of A.B.,
late of the _____ of _____, in the County
of _____, and Province of Ontario deceased;

And in the matter of "The Devolution of
Estates Act," and Amending Acts.

Know all men by these presents, that whereas, A.B., late
of the _____ of _____, in the County of _____,
deceased, died on or about the _____ day of _____, A.D.
_____, intestate, and leaving him surviving me, _____,
his lawful widow;

And whereas, I am entitled to dower out of the real estate
of the said deceased;

Now therefore I, the said _____ widow of the said
A.B., deceased, have elected, and do hereby elect, to take the
share or interest in the undisposed of real estate of the said

1523

Deed of election by widow.
(a)

A.B., to which I may be entitled under the provisions of "The Devolution of Estates Act," and amendments thereto, in lieu of all dower which, but for this election, I might have had in respect of the real estate of which the said *A.B.*, my husband, was at any time seised, or to which at the time of his death he was beneficially entitled.

And I do hereby release said discharge [the hereafter mentioned and] all [other] lands which the said deceased *A.B.* was seised of or entitled to during his lifetime, or to which he died beneficially entitled, of and from any claim to dower therein. [The lands and premises above referred to are amongst others (*describe them*).] (*a*).

In witness whereof I have hereunto set my hand and seal this (*date*).

(*Signature.*) [L.S.]

Signed, sealed and delivered
in presence of

(*Signature of witness.*)

1524

Affidavit of
publication of
notice to credi-
tor.

(*Formal parts: see No. 744.*)

1. I have examined copies of the Ontario Gazette of the issues bearing date the _____ day of _____, and the _____ day of _____, 19____ (*as the case may be*).

2. A notice (a true copy of which taken from one of the said issues, is now shewn to me and marked as Exhibit "A" to this affidavit), to the creditors of the said *A.B.*, deceased, appeared in each of the said issues of the Ontario Gazette.

3, 4. I have examined copies of the (*name of local newspaper*) published at _____, and bearing date, &c., &c. (*to the same effect as in pars. 1 and 2 in regard to the notice in the Ontario Gazette*).

5. No claims against the estate of the said *A.B.* have been sent in to (*as in the notice*) pursuant to the said advertisement, and I verily believe that all the debts due by the said deceased at the time of his death have been paid. (*Or if claims have been received they must be mentioned as may be most convenient under the circumstances of the case. If numerous or of doubtful validity it may be necessary to make affidavits somewhat like those given in Form 949.*)

(*a*) It is not absolutely necessary to particularly describe the land. When not described the instrument can only be registered in the General Register. Where convenient, a clause to the effect of this deed may be inserted in the conveyance to a purchaser of the real estate of the deceased.

CHAPTER XXIX.

PROCEEDINGS UNDER "THE RAILWAY ACT" OR "THE RAILWAY ACT OF ONTARIO."

"The Railway Act." (b)

1525

Advertisement of intention to expropriate. (a)

In the matter of the railway company.

Notice is hereby given that on the day of the
plan, profile and book of reference of the railway
was deposited in the office of the Registrar of Deeds, (c) of
the [county] of pursuant to the statute in that behalf.

Dated, &c.

Solicitors for the Railway
Company.

"The Railway Act." (b)

1526

Notice to be served on the owner of lands taken, &c. (d)

In the matter of the railway company.

Province of Ontario.	}	To , of the
County of	}	of , in the County
Township of	}	of , owner of the prop- erty hereinafter described.

You are hereby notified under the provisions of ["The Railway Act,"] as follows:—

1. The above mentioned railway company requires for the purposes of its railway certain lands in the belonging to you shewn on the map or plan deposited with the Board of Railway Commissioners for Canada, (e) and in the office of the Registrar of Deeds (f) for the [County]

(a) 3 Ed. vii. c. 58, s. 152 (D.) ; R. S. O. 1897 c. 207, s. 19.

(b) "The Railway Act of Ontario," in the case of a railway subject to R. S. O. 1897 c. 207: see sec. 1.

(c) "The Clerk of the Peace," under R. S. O. 1897 c. 207: see s. 10 (3).

(d) See 3 Ed. vii. 58, s. 154 (D.) and R. S. O. 1897 c. 207, s. 20 (1).

(e) "The Provincial Secretary," under R. S. O. 1897 c. 207: see s. 10 (2).

(f) See 3 Ed. vii. c. 58, s. 124 (D.). "The Clerk of the Peace," under R. S. O. 1897 c. 207: see s. 10 (3).

of and particularly described as follows:—(*describe the land to be taken. Or if land is not to be taken, describe the powers intended to be exercised in regard to the land with a description of the land*).

2. The said railway company is ready and willing and hereby offers to pay you the sum of \$ as compensation [for the said lands, and all damages occasioned by the taking thereof and by the exercise of any of the powers granted by the said Act, or by the Act of Incorporation of the said company, for or in respect to the railway, or conferred upon the said company by the said Acts or any of them, or for all damage occasioned by the taking of materials and the exercise by the said company of the said powers, and of all or any of the powers granted by the said Act, or by the Act of incorporation of the said company, for or in respect to the railway or conferred upon the said company by the said Acts or any of them].

[3. The said company hereby appoints of the of (*addition*) as the arbitrator of the said company if its said offer is not accepted by you.] (*a*)

Dated at this day of A.D. 19 .

Solicitors for the Railway Co.

1527

Certificate of
P. L. Surveyor
or Engineer. (*b*)

I of the of in the County of
Provincial Land Surveyor of the Province of Ontario [*or*
civil engineer] do hereby certify as follows:—

1. I am a disinterested person in this matter.

2. The land described in the [*above or annexed*] notice, and shewn on the map or plan therein mentioned is required for the railway of the said Railway Company, or is within the limits of deviation allowed by [*The Railway Act*].

3. I know the said parcel of land [*or the amount of damage likely to arise from the exercise of the powers of the said company as mentioned in the said notice*].

4. The sum offered by the said company in and by the said notice is in my opinion a fair compensation for [*the said land and*] the damages likely to arise from the exercise

(*a*) This clause is necessary under R. S. O. 1897 c. 207 only. see s. 20 (1).

(*b*) To accompany the Notice No. 1526; see 3 Ed. vii. c. 58, s. 155 (D.); R. S. O. 1897 c. 207, s. 20 (2).

by the said company of the powers conferred upon it by the said Act or by the Act of incorporation of the said company.

As witness my hand the day of , A.D. 19 .

(Signed)

L. S.

(Title, &c.: see No. 1525 or 1529.)

Take notice that the railway company requires immediate possession of the land above mentioned, which is necessary on a part of the railway with which the said company is ready forthwith to proceed, and further take notice that an application will be made to the [presiding Judge in Chambers at Osgoode Hall, Toronto, or as the case may be] (d) on day the day of , A.D. 19 , at the hour of o'clock in the noon, or as soon thereafter as the application can be heard on behalf of the said Railway Company for his warrant to the sheriff of the of to put the said company in possession of the said lands under the provisions of the Railway Act, and amendments thereto (*conclude as in No. 403*).

1528
Notice to be served where immediate possession required. (c)

THE RAILWAY ACT. (f)

In the matter of the Railway Company.
and A.B.

And in the matter of lot, &c. (*shortly describing the land*).

I of the of in the County of
(*addition*) make oath and say as follows:—

1. I am of the Railway Company above mentioned, and am acquainted with the state and condition of the said company's work on its railway, and what is required in respect of the same.

1529

Affidavit to obtain immediate possession of land required. (e)

(c) See 3 Ed. vii. c. 58, ss. 170, 171 (D.). Cf. R. S. O. 1897 c. 207, s. 20 (24).

(d) The application may be to a Judge of the High Court or to a Judge of the County Court of the County in which the lands lie under 3 Ed. vii. c. 58, s. 156 (D.).

Under R. S. O. 1897 c. 207, the application is to be made to a Judge of the County Court unless he is interested; see s. 20 (3), (4) and (24).

(e) See 3 Ed. vii. c. 58, s. 170 (D.).

(f) See note (b) on p. 913.

2. The said company requires immediate possession of the land above mentioned, which is shewn on the map or plan deposited with the Board of Railway Commissioners, (a) and in the Registry office, (b) for the [County] of and immediate possession of the said land is necessary to carry on a part of the said railway with which the company is ready forthwith to proceed. (*Any further particulars which shew the necessity for immediate possession should here be stated*).

3. Notice of the land required and a surveyor's certificate have been duly served on the said under the provisions of [The Railway Act,] and the amount mentioned in the said notice and certificate was tendered to the said but he refused to accept the same, and stated [that he would resist the taking possession of the said lands by the said company or as the case may be].

4. The said company is ready to give security to the satisfaction of a Judge in accordance with the provisions of [The Railway Act].

Sworn, &c.

1530

Warrant to
Sheriff to put
railway in
possession.

The Railway Act.

Dominion of Canada,	}	In the matter of The Railway Act.
Province of Ontario,		And in the matter of arbitration
County of .		between the &c., railway.

I, the Honourable one of His Majesty's Justices of the Supreme Court of Judicature for Ontario,
To Sheriff of the County of

Send greeting:

By virtue of the Special Acts incorporating the railway company above named, and of the authority in me vested by the Railway Act, and being satisfied by affidavits in that behalf that the immediate possession of the lands mentioned in a notice served on the above named [A. and B.] on the day of , A.D. 19 , and hereinafter specified is necessary to carry on that part of the railway of the said Railway Company, with which the said railway company is ready to proceed forthwith, and notice of the time and place when and where the applica-

(a) "The Provincial Secretary," under R. S. O. 1897 c. 207: see s. 10 (2).

(b) "The office of the Clerk of the Peace," under R. S. O. 1897 c. 207: see s. 10 (3).

tion for this warrant would be made having been served upon the said [A. and B.] and counsel for the said railway company having been heard before me and the said Railway Company have given security to my satisfaction by paying into the High Court of Justice to the joint credit of the said railway company and the said [A. and B.] the sum of \$750.00 in accordance with the provisions of "The Railway Act" as shown by the certificate of the Accountant of the Supreme Court of Judicature this day filed.

I command you that without delay you put the said Railway Company, its agents and servants, in possession of that certain parcel of land (*describe the land*) as set out in a map or plan and book of reference, and profile duly registered, which said lands are required by the said railway company for the purpose of its said railway.

And that you do put down all resistance and opposition thereto, taking with you sufficient assistance for that purpose.

Dated, &c.

Given under my hand and seal at Osgoode Hall, in the City of Toronto, this day of

To the Sheriff
of the County of

"The Railway Act."

The Hon. [Mr. Justice ,]

The day of

In Chambers,
at Osgoode Hall, Toronto.

A.D. 19 .

1531

Order for
possession of
land required
by the Rail-
way Co.

In the matter of The Railway Act. And in the matter of [the arbitration between] the Railway Company and [W.K. and A.K., and the Mortgage Corporation], owners of part of Township lot Number (*describing the land shortly*).

Upon application made to me on behalf of the Railway Company, and upon reading the notice served upon [W. K., and A.K.], on the day of , A.D. 19 , and the acceptance of service thereof by , their solicitor, on the said day of , A.D. 19 , and by , solicitor for [the Mortgage Corporation] on the day of ,

A.D. 19 , and upon reading the notice of expropriation served on the day of , A.D. 19 , on the said [W.K. and A.K.,] and on [the Mortgage Corporation] on the day of , A.D. 19 , the certificate of , engineer, thereon indorsed, and the affidavits of service of said notice and certificate, and upon reading the affidavits of , and the exhibits referred to therein respectively, and upon hearing counsel for the said Railway Company and for the said owners.

Now I, one of the Justices of the Supreme Court of Judicature for Ontario, being a Judge of a Supreme Court in and for the Province of Ontario, being satisfied by affidavits and papers produced and read before me that the following lands belonging to the said [W.K. and A.K., and the Mortgage Corporation], and at present in the possession of the said [W.K. and A.K.], are required by and to be taken by the said Railway Company situate within the County of that is to say: (*describing the lands*).

And also being satisfied that the said railway company is entitled to the immediate possession of the said piece of land for the purpose of taking and removing ballast therefrom and for the purpose of its said railway, so soon as it shall pay or legally tender the amount of compensation which shall be payable by the said railway company for the said lands, and for the damages which will be likely to arise from the exercise of the powers of the said railway company in respect thereof, which said compensation is to be hereafter determined, and further being satisfied that the immediate possession of the said lands by the said railway company is necessary to carry on a part of the said railway with which the said railway company is ready to proceed, do order that upon the payment by the said railway company of the sum of \$ of lawful money of Canada in the Branch of the Bank to the credit of the said railway company and the said [W.K. and A.K. and the Mortgage Corporation], jointly, as security for the payment of the said compensation, [and upon the deposit in Court of a receipt of the said Bank for the said sum to be delivered to the Accountant to abide the further order of the Court] a warrant shall forthwith issue and I hereby order the same to be issued and directed to the Sheriff of the County of , commanding him, the said Sheriff, to put the said railway company in possession of the said lands hereinbefore particularly mentioned and described, And I do further order

that no part of such deposit or of any interest thereon shall be repaid or paid out to the said company or to the said [W.K., A.K. or the Mortgage Corporation], without an order first being had and obtained therefor.

(Signature of Judge.)

(Title: see No. 1525-1529.)

Take notice that an application will be made to His Honour the Judge of the County Court of the County of at his chambers (*as the case may be*) [*or* the presiding Judge in Chambers at Osgoode Hall, Toronto] on day the day of at o'clock in the noon or so soon thereafter as the application can be made to nominate and appoint a sole arbitrator [*or*, three arbitrators, (*b*) *or* a third arbitrator (*c*)] in accordance with The Railway Act [*or* The Railway Act of Ontario].

1532

Notice of application to a judge to appoint an arbitrator. (*a*)

Dated this day of A.D. 19 .

To

Solicitors for the Railway Company.

See No. 532.

1533

Direction for payment into Court of compensation. (*d*)

County of }
To wit: }

1534

Appointment of a sole arbitrator. (*a*)

(Title: see Nos. 1525-1529.)

The said not having notified to the said railway company pursuant to The Railway Act [*or* The Railway Act of Ontario] his acceptance of the sum offered by them as compensation for the taking by the company of (*describe land*) the land mentioned in their notice to him served under the said Act [*or* not having notified to the said railway company the name of a person whom he appoints as arbitrator (*e*) and

(*b*) See 3 Ed. vii. c. 58, s. 159 (D.)

(*c*) See R. S. O. 1897 c. 207, s. 20 (6).

(*d*) See 3 Ed. vii. c. 58, s. 169 (D.) ; R. S. O. 1897 c. 207, s. 20 (26).

(*a*) 3 Ed. vii. c. 58, s. 159 (D.) ; R. S. O. 1897 c. 207, s. 20 (5).

(*e*) R. S. O. 1897 c. 207, s. 20 (5).

on the application of the said company I Judge of
the County Court of the County of by virtue of
the authority in me vested by the provisions of The Railway
Act [*or* The Railway Act of Ontario] do hereby appoint
of to be the sole arbitrator herein.

Dated, &c.

(Title: see No. 1529.)

1535

Appointment
of third arbi-
trator by
Judge. (a)

The arbitrators herein duly appointed by the railway
company and above named, being unable to agree upon a
third arbitrator, and due notice having been given under the
provisions of The Railway Act of Ontario, and on the appli-
cation of the said company I Judge of the County Court
of the County of (*or as the case may require*) by virtue of the
authority in me vested by the provisions of The Railway Act
of Ontario do hereby appoint of (*addition*) to
be the third arbitrator herein

Dated, &c.

(Signature.)

1536

Oath of arbi-
trators. (b)

You shall faithfully and impartially perform your duty
as [*sole or one of the*] arbitrator[s] appointed to fix the
compensation payable by the Railway Company to
A.B. in respect of the lands of the said A.B. in the
of , and described in the notice served upon the said
A.B. by the said Railway Company, to the best of your
skill and judgment.

So help you God.

1537

Award.

Know all men by these presents, that and
being the arbitrator[s] appointed pursuant to the pro-
visions of The Railway Act [*or* The Railway Act of Ontario
as the case may be] having duly taken upon [*myself or our-*
selves] the duties of my [*or our*] said office, and having pro-
ceeded conformably to the said Act to ascertain the compensa-
tion to be paid by the said company for [*the following parcel*
of land taken for the purposes of its railway, that is to say

(a) Under R. S. O. 1897, c. 207, s. 20 (6).

(b) 3 Ed. vii. c. 58, s. 160 (D.); R. S. O. 1897 c. 207, s. 20 (7).

(*describing it*), or for the damages likely to arise to A.B. by the exercise by the said Railway Company of the powers conferred upon it by statute *or* the taking of materials from the (*describe land*) belonging to the said A.B.] do hereby award and adjudge that the sum of \$ shall be paid by the said company as and for and in full of such compensation for [the taking of the said land *or as may be*].

As witness [my *or our*] hand[s] and seal[s] this day of , A.D. 19 .

Signed, sealed and delivered

in presence of

Memorandum of agreement made this day of A.D. 19 .

1538

Agreement for conveyance of land.

Between of the of in the County of and Province of Ontario, and the Railway Company.

1. The said agrees to sell and convey to the said company by a proper deed with bar of dower, and free from incumbrances so much of lot, &c., (*describing the land*) containing acres more or less which is required by the said company for its railway for the sum of \$ being the price of the said land and all damages (*as the case may be*).

2. The said company agrees to prepare at its own expense the necessary deed of said land, and to pay the said sum of \$ within [days from this date].

3. The said company is to be at liberty to take possession of said land forthwith for the purposes aforesaid.

Witness.

CHAPTER XXX.

PROCEEDINGS UNDER "THE ONTARIO CONTROVERTED ELECTIONS ACT."

1539

Petition. (a)

In the Court of Appeal.

"The Ontario Controverted Elections Act."

Election _____ for the Electoral District
of (*state the place*), holden on the _____ day of _____,
A.D.

The petition of _____, of the _____ of _____,
in the County of _____, in the Province of Ontario,
whose names [*or name*] are [*or is*] subscribed

1. Your petitioners are persons who voted [*or had a right to vote, as the case may be*] at the above election.

[*Or your petitioner was a candidate at the above election, or in the case of a cross-petition, is the respondent in the petition presented by A., or are persons who voted (or had a right to vote as the case may be), at the above election*].

2. And your petitioners state that the election was holden on the _____ day _____, A.D. _____, when A.B., C.D. and E.F., were candidates, and the Returning Officer has returned A.B. as being duly elected.

3. And your petitioners say that (*here state briefly and concisely the grounds on which the petitioners rely, e.g., That the respondent by himself and by his agents was guilty of bribery, treating and undue influence, and of other corrupt and illegal practices at the said election as defined by "The Ontario Election Act" and "The Ontario Controverted Elections Act." And on the ground that—state briefly and concisely any other ground that may be relied upon*).

Wherefore your petitioners pray:—

That it may be determined that [the said A.B. was not duly elected or returned, and that the election was void, *or* that the said E.F. was duly elected and ought to have been returned (*or as the case may*

be), or (in the case of a cross-petition), that the said C.D. [or E.F.] (or as the case may be) may be declared guilty of the unlawful and corrupt practices and acts alleged].

(Signature of petitioner or petitioners.)

(The following are examples of the form in which various grounds have heretofore been stated. These may be used as guides and from them the particular grounds relied on may be selected and concisely set out.)

4. And your petitioners say that the said respondent was, by himself, by his agents, and by other persons on his behalf, before, during, at and after the said election, directly and indirectly guilty of giving and lending, and agreeing to give and lend, and offering and promising money and other valuable consideration, and of promising to procure and of endeavouring to procure money and other valuable consideration to and for voters at the said election, and to and for persons on behalf of voters at the said election, and to and for other persons, in order to induce such voters to vote, or to refrain from voting at the said election, and of corruptly doing the said acts and every of them on account of voters having voted or refrained from voting at the said election.

Giving or lending money, &c., to voters. (b)

5. And your petitioners say that the said respondent was, by himself, by his agents and by other persons on his behalf, before, during, at and after the said election directly and indirectly guilty of giving and procuring and agreeing to give and procure, and of offering and promising, and of promising to procure, and to endeavour to procure offices, places and employment to and for voters at the said election, and to and for other persons in order to induce such voters to vote or refrain from voting at the said election, and of corruptly doing the said acts and each of them on account of such voters having voted or refrained from voting at the said election.

Procuring offices, &c., for voters. (c)

6. And your petitioners say that the said respondent was, by himself, by his agents and by other persons on his behalf before, during, at and after the said election, directly and indirectly guilty of making gifts, loans, offers, promises, procurements and agreements as aforesaid to and for divers per-

Procuring offices, &c., for persons influencing voters. (d)

(b) See R. S. O. 1897 c. 9, s. 159 (1) a.

(c) See R. S. O. 1897 c. 9, s. 159 (1) b.

(d) See R. S. O. 1897 c. 9, s. 159 (1) c.

sons in order to induce the said persons to procure and to endeavour to procure the return of the said respondent and of other persons to serve in the Legislative Assembly, and to procure and to endeavour to procure the votes of voters at the said election.

Corruptly in
fluencing re-
turn or voters.
(a)

7. And your petitioners say that the said respondent was, by himself, by his agents and by other persons on his behalf before, during, at and after the said election, upon or in consequence of such gifts, loans, offers, promises, procurements and agreements aforesaid, guilty of procuring and of engaging and promising and endeavouring to procure the return of the said respondent and of other persons to serve in the Legislative Assembly and the vote of voters at the said election.

Advancing or
paying money
for bribery. (b)

8. And your petitioners say that the said respondent was, by himself, by his agents and by other persons on his behalf before, during, at and after the said election guilty of advancing and of paying, and of causing to be paid money to and to the use of other persons, with the intent that such money or part thereof should be expended in bribery and corrupt practices at the said election, and of knowingly paying and causing to be paid, money to persons in discharge, and repayment of moneys wholly or in part expended in bribery and corrupt practices at the said election.

Respondent
corruptly con-
tracting for
gifts or offices
to voters. (c)

9. And your petitioners say that the said respondent was, by himself, by his agents and by other persons on his behalf, before and during the said election, directly and indirectly guilty of receiving, agreeing and contracting for money, gifts, loans, valuable considerations, offices, places and employment for divers persons for voting and for agreeing to vote and for refraining and agreeing to refrain from voting, at the said election.

Being con-
cerned in per-
sons receiving
money for vot-
ing, &c. (d)

10. And your petitioners say that the said respondent was, by himself, by his agents and by other persons on his behalf, after the said election, guilty of directly and indirectly receiving money and valuable considerations on account of persons having voted and refrained from voting, and for having induced other persons to vote and refrain from voting, at the said election.

Treating. (e)

11. And your petitioners say that the said respondent was, by himself, by his agents and by other persons on his behalf,

(a) See R. S. O. 1897 c. 9, s. 159 (1) d.

(b) See R. S. O. 1897 c. 9, s. 159 (1) e.

(c) See R. S. O. 1897 c. 9, s. 160 (1) a.

(d) See R. S. O. 1897 c. 9, s. 160 (1) b.

(e) See R. S. O. 1897 c. 9, ss. 161, 163.

before, during, at and after the said election, guilty of providing and furnishing drink and other entertainment at the expense of the said respondent, or of such other agents or persons, to meetings of electors assembled for the purpose of promoting the said election previous to or during the said election, and of paying for, promising and engaging to pay for such drink and other entertainment.

12. And your petitioners say that the said respondent was, by himself, by his agents and by other persons on his behalf, before, during, at and after the said election, directly and indirectly, guilty of corruptly giving and providing and causing to be given and provided, and being accessory to the giving and providing and of paying wholly and in part expenses incurred for meat, drink, refreshment and provision to and for persons in order to be elected and for being elected, and for the purpose of corruptly influencing such persons and other persons to give or to refrain from giving their votes at the said election, and of giving and of causing to be given to voters on the nomination day and on the day of polling on account of such voters having voted and of being about to vote, meat, drink and refreshment and money and tickets to enable such voters to procure refreshment. Candidate corruptly providing refreshments. (f)

13. And your petitioners say that the said respondent was, by himself, by his agents and by other persons on his behalf before and during the said election guilty of making bets and wagers and of taking shares or interests in and of becoming party to bets and wages upon the result of the election in the said electoral district and upon the results of the election in parts of the said electoral district and upon events and contingencies relating to the election, and of providing money to be used by others in betting and wagering upon the results of elections to the Legislative Assembly and upon events and contingencies relating to such election, and for the purpose of influencing the said election of making bets and wagers on the result thereof in the electoral district and in parts thereof and upon events and contingencies relating thereto. Wagering or betting on result of election. (g)

14. And your petitioners say that the said respondent was, by himself, by his agents, and by other persons on his behalf, before, during, at and after the said election, guilty of hiring and promising to pay and paying for horses, teams, carriages, cabs and other vehicles to convey voters to and from the polls, and to and from the neighbourhood thereof at Hiring vehicles. (h)

(f) See R. S. O. 1897 c. 9, ss. 162, 163.

(g) See R. S. O. 1897 c. 9, s. 164.

(h) See R. S. O. 1897 c. 9, s. 165.

the said election, and also of the payment of the travelling and other expenses of voters in going to and returning from the said election, and of providing and furnishing conveyance and transportation by railway free of charge, or at diminished rates to voters to or from or on the way to or from the polls at the said election.

Undue influence. (a)

15. And your petitioners say that the said respondent was, by himself, by his agents, and by other persons on his behalf, before, during, at and after the said election, directly and indirectly, guilty of making use of, and of threatening to make use of, force, violence and restraint and of inflicting and of threatening the infliction, by himself and by and through other persons of injury, damage, harm and loss and in other ways of practising intimidation upon or against persons in order to induce or compel such persons to vote or to refrain from voting at the said election, and on account of such persons having voted or refrained from voting at the said election, and also, by abduction, duress and by fraudulent devices and contrivances, of impeding, preventing and otherwise interfering with the free exercise of the franchise of voters and of thereby compelling, inducing and prevailing upon voters either to give or to refrain from giving their votes at the said election.

Personation. (b)

16. And your petitioners say that the said respondent was, by himself, by his agents and by other persons on his behalf, before, during, and at the said election guilty of the offence of personation at the said election and of aiding, abetting, counselling, and procuring the commission at the said election of the offence of personation.

Illegal voting. (c)

17. And your petitioners say that the said respondent was, by himself, by his agents, and by other persons on his behalf, before, during, and at the said election, guilty of voting and of inducing and procuring persons to vote at the said election, knowing that the person so voting was not entitled to vote thereat.

Selling liquor on polling day (d)

18. And your petitioners say that the said respondent during the said election and during the hours appointed for polling was, by himself, by his agents, and by other persons on his behalf, guilty of the offence of selling or giving spirituous and fermented liquor and strong drink at hotels, taverns,

(a) See *Ib.* s. 166.

(b) See *Ib.* s. 167; 1 Ed. vii., c. 3, s. 1.

(c) See *Ib.* s. 168; *Smith v. Carey* (1903) 5 O. L. R. 203.

(d) See *Ib.* s. 170.

shops and other places within the limits of polling subdivisions during the polling day therein.

19. And your petitioners say that the said respondent before and during the said election personally engaged divers persons at the said election as canvassers and agents in relation to the said election, knowing that such persons so engaged had within eight years previous to such engagement been found guilty of corrupt practices by competent legal tribunals and by the reports of Judges upon election petitions.

Engaging disqualified canvassers and agents. (e)

20. And your petitioners say that the said respondent was by himself, by his agents, and by other persons on his behalf, before, during, at and after, the said election, guilty of corrupt practices, as defined by "The Ontario Election Act" and other Acts of the Province of Ontario, and as known to the common law of Parliament, and as the term "corrupt practices" is interpreted in the interpretation clause of "The Ontario Controverted Elections Act."

General corrupt practices. (f)

21. And your petitioners say that corrupt practices, as defined by "The Ontario Election Act," and by other Acts of the Parliament of Ontario, and as known to the common law of Parliament, and as the term "corrupt practices" is interpreted in the interpretation clause of "The Ontario Controverted Elections Act," were committed by the agents of the said respondent and by other persons on his behalf, before, during, at and after the said election by and with the actual knowledge and consent of the said respondent, whereby and in consequence whereof the said respondent was and is disqualified, and was and is incapable of being elected or sitting in the said Legislative Assembly, and of voting at any election of a member of the said Legislative Assembly, and of holding any office in the nomination of the Crown or of the Lieutenant-Governor in Ontario.

Corrupt practices by agents.

22. And your petitioners say that the said respondent was before, during, at and after the said election by himself personally guilty of corrupt practices as defined by "The Ontario Election Act" and other Acts of the Province of Ontario and as known to the common law of Parliament, and as the term "corrupt practices" is interpreted in the interpretation clause of "The Ontario Controverted Elections Act," whereby and in consequence whereof the said respondent was and is disqualified and was and is incapable of being elected to or sitting in the said Legislative Assembly, and of voting at any election of a member of the said Legislative Assembly, and of holding any office in the nomination of the Crown or of the Lieutenant-Governor in Ontario.

Corrupt practices by candidate. (f)

(e) See R. S. O. 1897 c. 9, s. 178.

(f) See R. S. O. 1897 c. 9, s. 171.

ting in the said Legislative Assembly and of holding any office in the nomination of the Crown or of the Lieutenant-Governor in Ontario.

1540

Indorsement
on petition.

This petition is presented by _____ of
the _____, in the County of _____, Solicitor for
the petitioner.

1541

Appointment
of agent. (a)

We, the above named petitioners do hereby appoint
_____ of the _____, of _____, in the County
of _____, Solicitor, to act as our agent in this matter;
and all notices addressed to us herein may be left with or at
the address of the said Solicitor in his office No. _____ street,
in the said _____ of _____.

Dated this _____ day of _____, 19 _____.

(Signature of petitioners.)

1542

Notice of
presentation
of petition. (b)

(Title of matter: see No. 1539.)

Take notice, of the presentation of the petition of _____ as
against you _____
member of the Legislative Assembly of the Province of On-
tario for the above named electoral district, which said peti-
tion was presented on the _____ day of _____,
A.D. 19 _____, and a copy of the said petition is hereunto
attached.

And further take notice that the sum of \$1,000 has been
deposited in the Canadian Bank of Commerce to the credit of
the said petition with the privity of the Accountant for the
purposes referred to by, and in accordance with the provi-
sions of, the above named Act, and amending Acts.

Dated this _____ day of _____, A.D. 19 _____.

To

Solicitors for the Petitioners.

The above named respondent.

(a) To be left with the petition at the office where the petition
is filed: see Election Rule 5.

(b) See R. S. O. 1897, c. 11, s. 15.

(Title of matter: see No. 1539.)

1543

We, _____ of the _____ of _____, and _____, of the _____ of _____, and _____, of the _____ of _____, in the County of _____, and Province of Ontario, severally make oath and say:—

Affidavit
verifying
petition. (c)

1. That we are the petitioners named in the annexed petition.

2. That we as such petitioners present the said petition in good faith, and have reason to believe and do believe the statements contained in the said petition to be true in substance and in fact.

Sworn, &c.

1544

Order for particulars.

In the Court of Appeal for Ontario.

The Honourable Mr. Justice

the _____ day of _____, A.D. 19 _____.

The Ontario Controverted Elections Act.

Election for the Electoral District of _____,

holden on the _____ day of _____,

19 _____.

Between A.B., Petitioner,

and

C.D., Respondent.

Upon the application of counsel [*or* the solicitor] for the respondent, and upon reading the notice of motion herein dated the _____ day of _____, A.D. 19 _____, and the affidavit and papers therein mentioned, [the affidavit of service of the said notice of motion]; and upon hearing counsel [*or* the solicitor] for the [petitioner and] respondent [*or* no one appearing for the petitioner]:

It is ordered that the above named petitioner do, not less than [twenty-five days] before the day that may be fixed for the trial of the petition herein, file with the Registrar of this Court and serve upon the solicitor and agent of the respondent full particulars in writing of the bribery, corrupt practices and other illegal acts and practices charged in the said petition, more particularly the following, that is to say:

(c) See R. S. O. 1897 c. 11, s. 11. A similar affidavit is required for the verification of any particulars delivered: see s. 11.

Bribery.

(1) Under paragraphs [3 and 4]—the names, residences and additions of all persons mentioned or referred to in the said paragraphs [3 and 4] of the petition as being the agents of the respondent, with the particular acts of bribery and undue influence charged in the said petition, setting forth the nature of the bribery or undue influence alleged to have been practised, and the times when, or the approximate times when (if the exact times be not known), and the places where, such bribery and undue influence were done or committed, and the names, residences and additions of the persons respectively with, to or upon whom such acts of bribery and undue influence were done by the respondent or by the agents of the respondent.

Treating.

(2) The names, residences and additions of all persons claimed to be agents of the respondent, who were guilty of providing and furnishing drink and other entertainment at the expense of the respondent or his agents to meetings of electors assembled for the purpose of promoting the election in question previous to and during the said election, and of paying and promising and engaging to pay for such drink and other entertainment, together with the times when, or the approximate times when (if the exact times be not known) and the places where the same occurred, and the names, residences and additions of the persons present at such meetings, or to whom or for whom were provided and furnished drink and other entertainment by the respondent or his agents, as charged in the [11th] paragraph of the petition.

Candidate corruptly giving refreshments.

(3) The names, residences and additions of all persons claimed to be the agents of the respondent, who were guilty of corruptly, before and during the said election, giving and providing and causing to be given and provided, and who were accessory to giving and providing or paying the expenses incurred for meat, drink, refreshment and provision to and for divers persons, in order to further the election of the respondent, or for the purpose of corruptly influencing such person or persons, or other persons, to give or refrain from giving their votes at the said election, as charged in the [12th] paragraph of the petition, together with the times when, or the approximate times when (if the exact times be not known) and the places where, such acts were committed, whether committed by the respondent or his agents, and the nature of each of such acts, and the names, residences and additions of all persons who were provided by the respondent or his agents with meat, drink, refreshment or provision, or who were

corruptly influenced, as charged in the said paragraph of the petition.

(4) The names, residences and additions of all persons claimed to be agents of the respondent, who were guilty of giving and causing to be given to voters on nomination day and the polling day of the said election, on account of such voters being about to vote or having voted, meat, drink, refreshment and money and tickets to enable such voters to procure refreshment, as charged in the [12th] paragraph of the said petition, together with the times when, or the approximate times when (if the exact times be not known), and the places where, such acts were committed, whether by the respondent or his agents, and the names, residences and additions of all persons to whom were so given meat, drink and refreshment and the money and tickets by the respondent or his agents, charged in the said paragraph of the said petition. Candidate corruptly giving refreshments.

(5) The names, residences and additions of all persons claimed to be the agents of the respondent, who were guilty, for the purpose of influencing the election in question, of betting and wagering, and of providing money to be used by others in betting and wagering upon the result of the said election, and upon events and contingencies relating to the said election, as charged in the [13th] paragraph of the petition, together with the times when, or the approximate times when (if the exact times be not known), and the places where, such wrongful acts were committed, and the names, residences and additions of all persons who were provided by the respondent or his agents with money to be used in betting and wagering as aforesaid, together with the nature of the betting and wagering and of the events and contingencies referred to in the said paragraph. Wagering or betting on result of election

(6) The names, residences and additions of all persons claimed to be the agents of the respondent, who were guilty of hiring and promising to pay and paying for horses, teams, carriages, cabs and other vehicles to convey voters to or near or from the polls, or from the neighbourhood thereof, for the said election, and of providing and furnishing railway tickets and passes free of charge for the conveyance of voters to and from the polls, and of paying the travelling and other expenses of voters in going to and returning from the said election, as charged in the [14th] paragraph of the petition, together with the times when, or the approximate times when (if the exact times be not known), and the places where, such Hiring vehicles.

wrongful acts were committed, together with the names, residences and additions of all persons whose horses, teams, carriages, cabs and other vehicles were hired by the respondent or his agents, and who received pay therefor, or the promise of pay, and the names of the railways for which tickets or free passes were issued as aforesaid, and the places from and to which they are alleged to have been furnished or given.

Personation.

(7) The names, residences and additions of all persons alleged to be agents of the respondent, who were guilty of the offence of personation within the meaning of the said Act, and of aiding, abetting, counselling and procuring the commission of the offence of personation charged in the [16th] paragraph of the said petition, together with the names, residences and additions of the persons who are alleged to have been personated, whether by the respondent or his agents, and the name of the municipality and the number of the polling booth at or in which the said offence of personation was committed, and the times when, or the approximate times when (if the exact times be not known), and the places where such aiding, abetting, counselling and procuring the commission of the offence of personation were done or committed, together with the full particulars of the nature of the aiding, abetting, counselling and procuring the commission of the offence of personation.

Illegal voting.

(8) The names, residences and additions of all persons claimed to be the agents of the respondent, who were guilty of voting and inducing and procuring persons to vote at the said election, knowing that such persons had no right to vote at the said election, together with the names, residences and additions of all persons who were so induced or procured to vote by the respondent or his agents, as charged in the [17th] paragraph of the said petition, and the name of the municipality and the number of the polling booth where such acts were committed.

Selling liquor
on polling day

(9) The names, residences and additions of all persons claimed to be the agents of the respondent, who were guilty of selling and giving at hotels, taverns, shops and other places within the limits of polling divisions in the said electoral district during the polling day therein spirituous and fermented liquors, together with the name or other designation of the hotel, tavern, or shop or other place at which the

wrongful acts charged by the [18th] paragraph of the petition to have been committed by the respondent or his agents were done, and the times, or approximate times (if the exact times be not known) when, and the places where, the same were committed, together with the names, residences and additions of all persons to whom were given or sold by the respondent or his agents spirituous and fermented liquors, as charged in the said paragraph of the said petition.

2. And it is further ordered that no evidence shall be received at the trial of the petition herein (without the leave of the Court or a Judge) except as to matters in respect to which full written particulars shall have been given, pursuant to this order.

3. And it is further ordered that the costs of and incidental to this application and consequent thereon be costs in the cause to the successful party.

(Signed)

Registrar.

In the Court of Appeal for Ontario.

The Ontario Controverted Elections Act.

Election petition for the Electoral District of the (*state the place*).

Take notice that the above petition [*or petitions*] will be tried at on the day of A.D. 19 , and on such other subsequent days as may be needful.

Dated the day of , A.D.

By order,

Registrar of the Court of Appeal.

1545

Notice of trial. (a)

Court for trial of the election petition for the Electoral District of the (*state the place*). The day of A.D.

To A.B. (*describe the person*).

You are hereby required to attend before the above Court at (*place*) on the day of , at the hour of .

1546

Order to compel the attendance of a person as a witness. (b)

(a) See Election Rule, 29.

(b) See Election Rule 39.

[*or forthwith as the case may be*] to be examined as a witness in the matter of the said petition, and to attend the said Court until your examination shall have been completed.

As witness my hand.

A.B.,

Judge of the said Court.

1547

Warrant of
committal for
contempt. (a)

. At a Court holden on _____ at _____, for the trial of the election petition for the Electoral District of the (*state the place*) before the Honourable _____, one of the Judges [*or before the Honourable* _____, and the Honourable _____ the Judges] on the rota for the trial of election petitions, pursuant to "The Ontario Controverted Elections Act."

1. Whereas, A.B. has this day been guilty, and is by the said Court adjudged to be guilty of a contempt thereof; the said Court does, therefore, sentence the said A.B. for his said contempt to be imprisoned in the common gaol of the County [*or City, (as the case may be)*] of _____, for the space of _____ calendar months, and to pay to our Lord the King a fine of \$ _____, and to be further imprisoned in the said gaol until the said fine be paid.

2. And the Court further orders that the Sheriff of the said County (*or as the case may be*), and all constables and officers of the peace of any County or place where the said A.B. may be found, shall take the said A.B. into custody, and convey him to the said gaol, and there deliver him into the custody of the gaoler thereof to undergo his said sentence.

3. And the Court further orders the said gaoler to receive the said A.B. into his custody, and that he shall be detained in the said gaol in pursuance of the said sentence.

Dated the _____ day of _____, A.D.

(*To be signed by the Judge or Judges.*)

1548

Notice of
application for
leave to with-
draw a peti-
tion. (b)

In the Court of Appeal.

The Ontario Controverted Elections Act.

The Electoral District of the (*state the place*).

Petition of (*state petitioner*) against (*state respondent*)
presented _____ day of _____, A.D.

(a) See Election Rule 40.

(b) See Election Rule 43.

The petitioner proposes to apply to withdraw his petition upon the following ground (*here state the ground*), and prays that a day may be appointed for hearing his application.

Dated the day of , A.D.

(*Signature of applicant.*)

In the Court of Appeal.

The Ontario Controverted Elections Act.

Election petition for the Electoral District of (*state the place*) in which is petitioner and respondent.

Notice is hereby given that the above petitioner has on the day of lodged at the office of the Registrar of the Court of Appeal, notice of an application to withdraw the petition on the following ground (*set it out*).

And take notice that any person who might have been a petitioner in respect of the said election may, within ten days after the publication of this notice, give notice to the Registrar of the Court of Appeal, in writing, of his intention on the hearing to apply for leave to be substituted as a petitioner.

Dated, &c.

A.B.

Returning officer.

(c) See Election Rule 45.

1549
Notice of such
application to
be published.
(c)

CHAPTER XXXI.

PROCEEDINGS UNDER "THE DOMINION CONTROVERTED ELECTIONS ACT."

1550

Petition. (a) In the High Court of Justice.

"The Dominion Controverted Elections Act."

Election of a member for the House of Commons of Canada for the Electoral District of the Riding of the County of , holden on the [31st] day of [October] and [7th] day of November, A.D. 1900.

DOMINION OF CANADA, } The petition of
Province of Ontario, } of the
To Wit: } in the County of
whose name is subscribed, sheweth as follows:—

1. Your petitioner, is a person who was duly qualified and had a right to vote at the above mentioned election.

2. Your petitioner states that the election was holden on the 31st day of October and the 7th day of November, A.D., 1900, when were the candidates, and the Returning Officer has returned the said hereinafter referred to as the respondent as being duly elected.

3. And your petitioner says that the said respondent was by himself, by his agents, and by other persons on his behalf, before, during, at and after the said election, guilty of bribery, treating, personation and undue influence as defined by "The Dominion Elections Act," "The Dominion Controverted Elections Act," and other Acts of the Parliament of Canada, or recognized as such by the common law of Parliament.

Giving, etc.,
money. (b)

4. And your petitioner says that the said respondent was, by himself, by his agents, and by other persons on his behalf, before, during, at and after the said election, guilty of giving and lending, and agreeing to give and lend, and offering and promising money and other valuable consideration, and of promising to procure and to endeavour to procure money

(a) This is the form which is at present ordinarily used. Probably statements less general and comprehensive and more strictly confined to the various grounds really relied on would be sufficient.

(b) See R. S. C. c. 8, s. 84 (a).

and other valuable consideration to and for persons entitled to vote at the said election, and to and for persons on behalf of persons entitled to vote at the said election, and to and for other persons, in order to induce such persons to vote or to refrain from voting at the said election, and of corruptly doing the said acts and every of them on account of voters having voted or refrained from voting at the said election.

5. And your petitioner says that the said respondent was, by himself, by his agents and by other persons on his behalf, before, during, at and after the said election, guilty of giving and procuring and agreeing to give and procure, and of offering and promising, and of promising to procure, and to endeavour to procure offices, places, and employment to and for other persons in order to induce such voters to vote or refrain from voting at the said election, and of corruptly doing the said acts and each of them on account of such voters having voted or refrained from voting at the said election.

Promising to procure employment. (c)

6. And your petitioner says that the said respondent was, by himself, by his agents and by other persons on his behalf before, during, at and after the said election, guilty of making gifts, loans, offers, promises, procurements and agreements as aforesaid to and for divers persons in order to induce the said persons to procure and to endeavour to procure the return of the said respondent and of other persons to serve in the House of Commons, and to procure and to endeavour to procure the votes of voters at the said election.

Making gifts, &c., to procure return, &c. (d)

7. And your petitioner says that the said respondent was, by himself, by his agents and by other persons on his behalf before, during, at and after the said election, upon or in consequence of such gifts, loans, offers, promises, procurements and agreements aforesaid, guilty of procuring and of engaging and promising and endeavouring to procure the return of the said respondent to serve in the House of Commons and the vote of voters at the said election.

Procuring return in consequence of gifts, &c. (e)

8. And your petitioner says that the said respondent was, by himself, by his agents and by other persons on his behalf before, during, at and after the said election guilty of advancing and of paying, and of causing to be paid money to and to the use of other persons, with the intent that such money or part thereof should be expended in bribery and corrupt prac-

Advancing money to be used in bribery. (f)

(c) See R. S. C. c. 8, s. 84 (b).

(d) See R. S. C. c. 8, s. 84 (e).

(e) See R. S. C. c. 8, s. 84 (d).

(f) See R. S. C. c. 8, s. 84 (e).

tices at the said election, and of knowingly paying and causing to be paid, money to persons in discharge, and repayment of moneys wholly or in part expended in bribery and corrupt practices at the said election, whereby the said respondent was and is incapacitated from serving in Parliament for the said electoral district, and the said election and return of the said respondent were and are wholly null and void.

Receiving money, &c., to induce persons to vote, &c. (a)

9. And your petitioner says that the said respondent was, by his agents and by other persons on his behalf, before and during the said election, guilty of receiving, agreeing and contracting for money, gifts, loans, valuable considerations, offices, places and employment for themselves, and for other persons for voting and for agreeing to vote and for refraining and agreeing to refrain from voting at the said election.

Or for having induced persons to vote. (b)

10. And your petitioner says that the said respondent was, by himself, by his agents, and by other persons on his behalf, after the said election, guilty of receiving money and valuable considerations for having induced other persons to vote and refrain from voting, at the said election.

Procuring offices, &c., to become or refrain from becoming a candidate.

11. And your petitioner says that the said respondent was, by himself, by his agents and by other persons on his behalf, before, during, at and after the said election, guilty of giving and procuring offices, places and employments, and of agreeing to give and procure, and of offering and promising to procure, and of endeavouring to procure, offices, places and employments for persons to induce a person or persons to allow himself or themselves to be nominated as a candidate or candidates, and to refrain from becoming a candidate, and to withdraw after becoming a candidate at the said election.

Treating, &c. (c)

12. And your petitioner says that the said respondent was by himself, by his agents and by other persons on his behalf, before, during, at and after the said election, guilty of providing and furnishing drink and other refreshment at the expense of the said respondent to electors during the said election, and of paying for, procuring and engaging to pay for such drink and other refreshment.

Accessory to treating, &c. (b)

13. And your petitioner says that the said respondent was by himself, by his agents and by other persons on his behalf, before, during, at and after the said election, guilty of corruptly giving and providing and causing to be given and

(a) See R. S. C. c. 8, s. 85 (a).

(b) See R. S. C. c. 8, s. 85 (b).

(c) See R. S. C. c. 8, s. 86.

provided, and being accessory to the giving and the providing and of paying wholly and in part expenses incurred for meat, drink, refreshment and provision to and for persons in order to be elected and for being elected, and for the purpose of corruptly influencing such persons and others to give or to refrain from giving their votes at said election, and of giving and of causing to be given to voters on the nomination day and on polling day, on account of such voters having voted and of being about to vote, meat, drink and refreshment and money and tickets to enable such voters to procure refreshments.

14. And your petitioner says that the said respondent was, by himself, by his agents, and by other persons on his behalf, before, during, at and after the said election guilty of intimidation and of intimidating and endeavouring to intimidate persons entitled to vote at the said election to induce or compel such persons to vote and to refrain from voting at the said election, and on account of such persons having voted or refrained from voting at the said election. Undue influence. (d)

15. And your petitioner says that the said respondent was, by himself, by his agents and by other persons on his behalf, before, during, at and after the said election, guilty of hiring and promising to pay and paying for horses, teams, carriages, cabs and other vehicles to convey voters to and from the polls and to and from the neighbourhood thereof at the said election, and also of the payment of the travelling and other expenses of voters in going to and returning from the said election. Hiring vehicles, &c. (e)

16. And your petitioner says that the said respondent did, by himself and by his agents and by other persons on his behalf, before, during and at the said election, contribute to, form and raise a central or general fund for the purpose, among other things, of paying the travelling and other expenses of persons entitled to vote at the said election, and for the purposes of purchasing railway and other tickets to be used in conveying such voters to or from the polls at the said election, and that such fund being so formed as aforesaid, the said respondent did, by himself, by his agents, and by other persons on his behalf, before, during, and at the said election, forward money and tickets from said central or general fund to such voters or to others on their behalf, for the purpose of thereby and therewith paying and Contributing to fund for corrupt practices.

(d) See 3 Ed. vii. c. 19 (D.).

(e) See R. S. C. c. 8, s. 88.

satisfying the travelling expenses of such voters in travelling to and from said election, and from places both inside and outside of said electoral district, and such money and tickets were used for the purposes aforesaid and otherwise.

Personation.
(a)

17. And your petitioner says that the said respondent was, by himself, by his agents, and by other persons on his behalf, before, during, at and after the said election guilty of the offence of personation at the said election and of corruptly aiding, abetting, counselling, procuring and compelling the commission at the said election of the offence of personation and of compelling and inducing and endeavouring to induce persons to personate voters and to take false oaths in matters wherein oaths are required under "The Dominion Elections Act."

Subornation
of personation. (b)

18. And your petitioner says that the said respondent was, by himself, by his agents, and by other persons on his behalf, before, during, and at the said election, guilty of voting and of inducing and procuring persons to vote at the said election, knowing that such persons were not entitled to vote thereat.

Employing
agents who
have been
guilty of corrupt practices.
(c)

19. And your petitioner says that the said respondent before and during the said election personally engaged divers persons at the said election as canvassers and agents in relation to the said election, knowing that such persons so engaged had within eight years previous to such engagement been found guilty of corrupt practices by competent legal tribunals and by the reports of Judges for the trial of election petitions.

Corrupt
practices. (d)

20. And your petitioner says that the said respondent was by himself, by his agents and by other persons on his behalf, before, during, at and after the said election, guilty of corrupt practices, as defined by section 120 and other sections of "The Dominion Elections Act" and other Acts of the Parliament of Canada, and as known to the common law of Parliament, and as the term "corrupt practices" is interpreted in the interpretation clause of "The Dominion Controverted Elections Act."

21. By reason of the matters aforesaid the said respondent was and is incapacitated from serving in the Parliament of Canada for the said electoral district, and the said election

(a) See R. S. C. c. 8, s. 89.

(b) See R. S. C. c. 8, s. 90.

(c) See R. S. C. c. 8, s. 94.

(d) See R. S. C. c. 8, s. 91.

and the return of the said respondent were and are wholly null and void.

22. And your petitioner says that corrupt practices, as defined by “The Dominion Elections Act,” and by other Acts of the Parliament of Canada, and as known to the common law of Parliament, and as the term “corrupt practices” is interpreted in the interpretation clause of “The Dominion Controverted Elections Act,” were committed by the agents of the said respondent and by other persons on his behalf, before, during, at and after the said election by and with the actual knowledge and consent of the said respondent, whereby and in consequence whereof the said respondent was and is disqualified, and was and is incapable of being elected or sitting in the said House of Commons, and of voting at any election of a member of the said House of Commons, and of holding any office in the nomination of the Crown or of the Governor-General in Canada.

23. And your petitioner says that the said respondent was before, during, at and after the said election by himself personally guilty of corrupt practices as defined by “The Dominion Elections Act” and other Acts of the Parliament of Canada and as known to the common law of Parliament, and as the term “corrupt practices” is interpreted in the interpretation clause of “The Dominion Controverted Elections Act,” whereby and in consequence whereof the said respondent was and is disqualified and was and is incapable of being elected to or sitting in the said House of Commons and of holding any office in the nomination of the Crown or of the Governor-General in Canada.

Wherefore your petitioner prays:

1. That it may be determined that the said respondent was not duly elected or returned and that the said election was void.

2. That it may be declared and found that the said respondent was and is guilty of the said several corrupt and illegal acts and practices hereinbefore charged as having been committed before, during, at and after the said election by himself and by his agents and other persons on his behalf, by and with the actual knowledge and consent of the said respondent.

3. That in consequence thereof the said respondent may be adjudged disqualified and incapable of being elected to or sitting in the House of Commons aforesaid, or of voting at an election of a member of that

"THE DOMINION CONTROVERTED ELECTIONS ACT."

House, and of holding any office in the nomination of the Crown, or of the Governor-General in Canada.

And your petitioner will ever pray, &c.

1551

Indorsement

Indorsement.

This petition is presented by _____ of the _____ of
in the _____ of _____, solicitor for the
petitioner.

1552Appointment
of agent.

In the High Court of Justice.

The Dominion Controverted Elections Act.

Election of a member for the House of Commons (&c., as
in No. 1550).

A.B., petitioner.

and

C.D., respondent.

I, _____ the above named petitioner, do hereby appoint
_____ of _____, solicitor, to act as my agent
in this matter; and all notices addressed to me herein may be
left with or at the address of the said solicitor at his office,
No. _____ street in the said _____ of _____,

Dated this _____ day of December, 19 _____.

(Signature.)

(Title of matter: see No. 1552.)

1553Notice of
presentation.

Take notice that on this _____ day of _____, A.D. 19 _____, a
petition was presented unto the Court and filed and delivered
in the office of the Registrar of the High Court of Justice
for Ontario, at Osgoode Hall, in the City of Toronto, by
a true copy of which said petition is hereto annexed.

And further take notice that at the time of the presenta-
tion of the said petition security, as required by "The Dom-
inion Controverted Elections Act," was given on behalf of
the petitioner by depositing the sum of \$1,000 with the Re-
gistrar, a copy of whose receipt therefor is hereto annexed.

Dated this _____ day of _____, A.D. 19 _____.

Yours, &c.,

(Signature).

Solicitors for the petitioner.

To

The above named respondent.

(Title of matter: see No. 1552.)

1554

Received from the petitioner herein the sum of \$1,000 as security for the payment of all costs, charges and expenses that may become payable by the petitioner herein pursuant to the provisions of "The Dominion Controverted Elections Act."

Dated at Osgoode Hall, in the City of Toronto, this
day of A.D. 19 .

(Title of matter: see No. 1552.)

1555

I, of the in the make oath and say: Affidavit verifying petition. (a)

1. That I am the petitioner, named in the petition hereto attached.

2. That I have good reason to believe and do verily believe that the several allegations contained in the said petition are true.

Sworn before me at the
of in the County this
day of A.D. 19 .

A commissioner, &c.

(a) See 54-55 V. c. 20, s. 3 (D.).

CHAPTER XXXII.

CONTROVERTED MUNICIPAL ELECTIONS.

1556

Notice of motion by a relator. (a)

In the High Court of Justice, *or* In the County Court of the County of

The King upon the relation of *A.B.*
against
C.D.

Take notice that by leave of [the Honourable Mr. Justice *or* the Master in Chambers—*or* His Honour *E.F.*, Esquire, Judge of the County Court of], a motion will be made [before the presiding Judge (*or as the case may be*) in Chambers at on the day of or on the eighth day after service hereof on you excluding the day of service (*a*)] at o'clock in the forenoon, or as soon thereafter as the motion can be heard on behalf of the above named *A.B.* (*setting out his name in full, occupation, place of residence*) who has an interest in the election as candidate [*or voter*] thereat (*as the case may be*), for an order declaring that , of (*here inserting the names and additions of all, if more than one person*), has [*or have*] not been duly elected, and has [*or have*] unjustly usurped and still does [*or do*] usurp the office of , in the Town of [*or Township of* , *as the case may be*], in the County [*or United Counties*] of , under the pretence of an election held on , at , in the said County [*or United Counties*] [*or for an order setting aside and declaring invalid and void the election or pretence of an election held, &c., under which the above named defendant unjustly has usurped and still does usurp the office of*] [*and (when it is claimed that the relator, or the relator and another, and others ought to have been returned) that (here name the party or parties so entitled) was [or were] duly elected thereto, and ought to have been returned at such election, and should now be admitted thereto*] upon the following amongst other grounds, that is to say:

First—That (*for example*) the said election was not conducted according to law, in this, that, &c.

(a) See Mun. Act, 3 Ed. vii. c. 19, s. 221.

Second—That the said was not duly or legally elected or returned, in this, that, &c.

Third—That, &c.

And upon the grounds disclosed in the affidavits and papers filed.

Or for such other order as may seem just and as the nature of the case may require.

And take notice, &c., as in No. 403, or where the relator intends to rely on *vivâ voce* evidence add some such clause as the following:

And take notice that upon such motion the relator proposes to take *vivâ voce* the evidence of the following persons (*naming them*) (b).

(Signed)

Relator.
or solicitor for the relator.

NOTE.—Where the intention of the relator is to impeach the election as being altogether void, since, in that event, the office cannot be claimed for any other or others, the portion of the above and succeeding forms relating thereto should be omitted.

(Title, &c., as in No. 1556.)

I, A.B., of the of , in the County of ,
(addition) make oath and say:

1557
Affidavit of
relator.

1. I am the relator above named, and my name, occupation, place of residence, and the interest which I have in the election referred to in the notice of motion now shewn to me marked A. are truly set forth in the said notice of motion.

2. I believe the several grounds which are set forth in the said notice of motion against the validity of the election therein mentioned are well founded.

Sworn, &c.

(b) See 3 Ed. vii. c. 19, s. 222. Affidavit evidence may be supported at the trial by *vivâ voce* evidence, although not mentioned in the notice of motion: *Rex ex rel. Ivison v. Irwin*, 4 O. L. R. 192.

(Title, &c., as in No. 1556.)

1558

Another form.

I A.B. of (residence), (addition) make oath and say as follows:

1. I am the above named relator.

2. I was [*shew relator's right to be relator, e.g. a candidate at the election of [councillors] held on the day of in the municipality of the or my name is on the list of voters entitled to vote at the election for [councillors] held on the day of in the municipality of and I was legally entitled to vote at such election and I duly voted [or tendered my vote] at the said election.*]

3. was declared by the returning officer to be duly elected [councillor] at the said election.

4. To the best of my knowledge and belief the election of the said is void and the said unduly usurps the office of [councillor] under the pretence of the said election.

5. My grounds for believing the said election is void are

(1) Because [the same was not conducted according to law in that, &c., *set out defects*]; and

(2) Because the said was not duly or legally elected or returned because [*state reason, e.g., he was not legally qualified to be a candidate for the said office of by reason of (state ground of disqualification).*]

(3) And also because, &c., *set out any other grounds there may be for voiding the election.*

6. The notice of motion I desire to be permitted to serve in this matter is now shewn to me and marked A.

Sworn, &c.

(Title, &c.: see No. 1556.)

(Date.)

1559

Fiat for service of notice of motion. (a)

Upon reading the notice of motion proposed to be served by A.B. of , of , in the County of , on C.D. of , for an order setting aside the election of said C.D. as [and (if so) declaring that the said (relator or other person named) was [or were] duly elected, and ought to have

been returned to the said office], and upon reading the affidavits filed in support of the said notice of motion, I do order that the said *A.B.* upon filing a sufficient recognizance pursuant to the statute in that behalf be at liberty to serve the said notice of motion upon the said *C.D.*

(Title, &c., as in No. 1556.)

1560
Recognizance.

Ontario :
County (or United Counties) of }
To wit :

Be it remembered, that on the day of , in the year of our Lord one thousand eight hundred and , before me, , of (b), Chief Justice of, &c., [or senior Judge of the County Court of the County of , a Justice, or a Commissioner for taking bail in His Majesty's High Court of Justice for Ontario], cometh (*name and occupation of the relator and of each surety*), of , and , of , and acknowledge themselves severally and respectively to owe to our sovereign lord the King, as follows, that is to say, the said (*relator*), the sum of two hundred dollars, and the said (*sureties*) the sum of one hundred dollars each, upon condition that if the said (*relator*) do prosecute with effect, the notice of motion in the nature of a *quo warranto* to be served pursuant to a fiat to be made at the instance and upon the relation of the said (*relator*), against the said (*respondent or respondents*) for an order declaring that he [or they] the said hath not been duly elected to the office of (*here state the office claimed*) and removing the said therefrom, &c., &c., as in the notice) [and (*where so claimed by the relator*) declaring that he the said *relator* (or the party or parties entitled) were duly elected, and should be admitted to the said office]; and if the said (*relator*) do pay to the said (*respondents*) all such costs as may be adjudged and awarded to the said (*respondents*) against the (*relator*), then this recognizance to be void, otherwise to remain in full force.

Taken and acknowledged the day and }
year first above mentioned.
Before me, }

(Signature of Judge or Commissioner.) (c)

(b) See 3 Ed. vii. c. 19, s. 220 (2).

(c) See Reg. *ex rel.* Mangan v. Fleming, 14 P. R. 458.

(*To be indorsed on the recognizance and upon the fiat allowing the service of the notice of motion.*) (a)

"Recognizance allowed."

Signature or initials of Judge.

(*Title, &c., as in No. 1556.*)

1561

Affidavit of
justification.

I, *A.B.*, of, &c., one of the sureties in the recognizance hereto annexed, make oath and say as follows:

1. I am a freeholder [*or householder, as the case may be*], residing at, &c.

2. I am worth property to the amount of one hundred dollars over and above what will pay all my just debts [*if bail in any other action add and for every other sum for which I am now bail*].

3. I am not bail in any other action or proceeding [*if so, except for E.F. at the suit of G.H. in the Court of, &c., in the sum of, &c., setting out all cases in which the deponent is bail*].

4. And I, *C.D.*, also one of the sureties in the recognizance hereunto annexed, make oath and say as follows:

5. I am a freeholder, &c. (*proceed as above*).

Sworn by the above named deponents, <i>A.B.</i> and <i>C.D.</i> , severally, before me, at the . of , this day of , <i>A.D.</i> 19 .	} (<i>Signatures of deponents.</i>)
(<i>Signature of Commissioner</i>), A Commissioner, &c.	

(*Title, &c., as in No. 1556.*)

1562

Affidavit of
service.

I, of in the (*addition*), make oath and say:

1. That I did on the day of last [*or instant as the case may be*], personally serve the above named defend-

ant [*or* defendants], with the annexed notice of motion by delivering to him [*or* each of them] a true copy thereof.

Sworn before me at the of , in }
the County of this day of } (*Signature of*
A.D. 19 . } *deponent.*)

(*Signature of Commissioner.*)

A Commissioner, &c.

1563

I, A.B., do hereby disclaim all right to the office of township Councillor, (*or as the case may be*) for the Township of (*or as the case may be*) and all defence of any right I may have to the same.

Disclaimer
before notice
served. (b)

Dated this, &c.

(*Signature of person disclaiming.*)

To the clerk of the corporation of

(*Title, &c., as in No. 1556.*)

1564

I, C.D., upon whom a notice of motion in the nature of a *quo warranto* has been served for the purpose of contesting my right to the office of Township Councillor (*or as the case may be*) for the Township of , in the County of , (*or as the case may be*), do hereby disclaim the said office and all defence of any right I may have to the same.

Disclaimer
after notice
served. (c)

Dated this day of , &c.

(*Signature of person disclaiming.*)

To the clerk of the corporation of

If the proceedings are pending in the High Court then add,
and to the Clerk in Chambers at Osgoode Hall, Toronto.

[*Or if the proceedings are pending in a County Court then add,* and to the Judge of the County Court of the County [*or United Counties of*].

(b) See 3 Ed. vii. c. 19, s. 240.

(c) See 3 Ed. vii. c. 19, s. 238.

(Title, &c.: see No. 1556.)

1565

Order for trial
of an issue. (a)

Upon the application of His Majesty the King upon the relation of *A.B.* to set aside the election of _____ chosen upon the _____ day of _____, to be _____ for the Township of _____ (or as the case may be), in the County of _____, and for an order declaring that he the said *A.B.*, [or that he the said *A.B.* and *C.D.*, &c., were, or that *C.D.*, &c., was duly elected, and ought to have been returned], it hath become material to ascertain whether (*here state concisely the issues to be tried*); and that the truth of such matters as aforesaid should be found by a jury: I do, therefore, pursuant to "*The Municipal Act*," order that an issue be tried between the said relator and the said *C.D.* before the Judge of the County Court of the County of _____ and a jury of the said County, and that the question [or questions] to be tried shall be whether (*here state the issues*).

Dated, &c.

1566

Indorsement
of verdict
thereon.

I certify that on the _____ day of _____, before me, *L.M.*, Judge of the County Court of the County [or United Counties] of _____, came as well the within named relator as the within named _____ (*the other party or parties*) by their solicitors (or as the case may be), and the jurors of the jury, before whom the said issues were tried, being sworn to try the matters within mentioned on their oath, said that, &c. (*set out findings*).

1567

Another
form.

I certify _____ that the issues [or issue] within mentioned were [or was] tried before me and a jury of the County of _____ in the presence of counsel for the within named (*relator*) and [*respondent*] and that the jury found [*here state finding*].

Dated, &c.

(Signature of Judge.)

Judge of the County Court of the County of _____

(Title, &c., as in No. 1556.)

1568

Judgment in
favour of the
relator.

Be it remembered, that on the _____ day of _____, in the year of our Lord one thousand nine hundred and _____, at _____

the Judges' Chambers in the City of Toronto, before me, ,
 Chief Justice of the King's Bench [or senior Judge of the
 County Court of the County of , or as the case may
 be] came as well the above named relator ,
 as the above named by their respec-
 tive solicitors, [or counsel] and upon the said day and
 upon other days thereafter, at my chambers aforesaid,
 having heard and read the notice of motion and proofs of
 the said relator, touching and concerning the usurpation by
 him alleged against the said of the office of , in the said
 notice of motion mentioned [and (if so) the election of (the
 party or parties named) thereto], and the answers and proofs
 of the said ; and having heard the said parties by their
 counsel (or as the case may be), and upon due consideration
 of the premises. Now, that is to say, this day
 of , 19 , I do adjudge and determine:*

First—That the said relator had, at the time of his making
 his aforesaid complaint, an interest in the election to the said
 office of as a

Secondly—That the said has [or have] usurped
 and does [or do] still usurp the said offices under pretence
 of an election thereto holden on the day of last
 at the said of and that the election aforesaid of the
 said to the said office was and is void and [if so that the
 said , before, during and after the election aforesaid,
 was by himself and by other persons, his agents, and by other
 persons on his behalf, and with his actual knowledge and
 consent, guilty of bribery, as defined by the Municipal Act,
 in respect of voters who voted at the said election and that
 by reason of the premises the said hath forfeited his
 seat as of the said of in virtue of the election
 aforesaid] [and has become, and he is hereby declared and
 adjudged to be, henceforward ineligible as a candidate at any
 municipal election for the term of two years from this date.]

Thirdly—That the relator [or the said (naming the party
 or parties whose election is affirmed, when he or they are ad-
 judged to be entitled to the said office)] was [or were] elected
 thereto, and ought to have been returned, and is [or are] en-
 titled in law to be received into, and to use, exercise, and enjoy
 the said office.

And I do adjudge and determine that the said (respondent
 or respondents) do not in any manner concern himself [or
 themselves] in or about the said office, but that he [or they]

be absolutely forejudged and excluded from further using or exercising the same under pretence of the said election, and that he be and he is hereby removed therefrom.

2. And I do further adjudge and determine that the said (*naming the relator or parties whose election is affirmed*) be [*or be respectively*] forthwith admitted, received and sworn into the said office in the place and stead of the said , to use, exercise and enjoy the same place.

[*Or, where the judgment is that no other person was duly elected.*

2. And I do further adjudge and determine that the Council of the municipal corporation of the of (*or the Sheriff of the County of*), do forthwith pursuant to "The Municipal Act" cause to be held an election of a person (*or persons*) in the place and stead of the said, who has (*or have*) been removed as afore-said and that the person (*or persons*) so elected be forthwith admitted, received and sworn into the said office to use, exercise and enjoy the same.]

3. (*If ordered*) And I do further order, adjudge, and determine, that the said relator do recover against the said , his costs and charges by him in and about the said relation and the prosecution thereof expended, to be taxed (*a*).

All which the said notice of motion and the statements, answers, and proofs of the said relator and of the said (*respondents*), and all other things had before me touching the same, I do hereby certify and deliver into the said Court, according to the form of the statute in such case made and provided.

(*Signature of Judge.*)

(*Proceed as in the foregoing form to the**)

1569

Judgment for
defendant.

that the said office of under the election to the same holden on the day of , 19 , be allowed and adjudged to the said (*respondent*) and that the said (*respondent*) be dismissed and discharged of and from the premises above charged upon him [*or them*]; and that he [*or they*] the said (*respondent or respondents*) do recover against the said relator [*or their*] costs by him [*or them*]

respectively] laid out and expended in defending himself [or themselves respectively] in this behalf.

All which, &c., as in No. 1568.

(Title and formal parts: see Nos. 1556, 1568, and No. 902.)

1570

Another form.

1. Upon the application of the solicitor for the relator, the above mentioned *A.B.*, in the presence of the solicitor [or counsel] for the above named *C.D.*, and upon having read the notice of motion and the [affidavits of , and the depositions of and], and upon hearing the solicitors [or counsel] aforesaid.

2. It is adjudged and determined that the said (*relator*) had at the time of serving the notice of this motion, and still has an interest in the election to the office of [Councillor] of the municipality of .

3. And it is further adjudged that the said *C.D.* has usurped and still does usurp the said office.

4. [If so: And it is further adjudged that the said (*relator or person*) was duly elected to the said office and ought to have been returned, and is entitled by law to be received into and to use, exercise and enjoy the said office.]

5. [If so: And it is further adjudged that the defendant *E.F.* was guilty of misconduct as returning officer at the said election.]

6. And it is further adjudged that the said *C.D.* be and he is hereby restrained from in any manner, using, exercising and enjoying, the said office and he is hereby forejudged and excluded from further using, exercising or enjoying the same under pretence of the said election, and he is hereby removed from the said office.

7. [If so: And it is further adjudged that the said be forthwith admitted, received and sworn into the said office in the place and stead of the said *C.D.*, to use, exercise and enjoy the same.]

8. [If so: And it is further adjudged that the council of the municipal corporation of [or the Sheriff of the County of] do forthwith pursuant to *The Municipal Act* in that behalf cause to be held an election of a person [or persons] in the place and stead of the said *C.D.*, &c.,

who has [*or have*] been removed as aforesaid, and that the person [*or persons*] who shall be then elected be forthwith admitted, received and sworn into the said office, to use, exercise and enjoy the same.]

9. [*If so*: And it is further adjudged that the (*respondent*) do pay to the relator his costs of this matter forthwith after taxation thereof.]

(*Formal parts: see No. 902.*)

(*Style of matter as in No. 1556.*)

1571

Order on an appeal in a contested municipal election. (*a*)

The motion of the above named *H.L.* by way of appeal from the order made herein by [the Master in Chambers] on the day of , 19 , in so far as the same awards the seat in question to the relator, and for an order directing a new election coming on to be heard before me *A.B.*, a Judge of the High Court, this day in presence of counsel for the relator and respondent and upon hearing read the order of [the Master in Chambers] and the affidavits and papers filed upon the application therefor, and upon hearing counsel aforesaid.

2. It is ordered that the said appeal be and the same is hereby allowed, with costs to be paid by the relator to the respondent forthwith after taxation thereof.

3. And it is further ordered that so much of the order or judgment of [the Master in Chambers] as doth adjudge and determine that the relator was elected to the office of

in the of ; at the election holden on the day of , 19 , and day of , 19 , and ought to have been returned as so elected, and is entitled in law to be received into and to use, exercise and enjoy the said office, and that the said relator be admitted to the said office, in the place and stead of the said , be and the same is hereby set aside and vacated.

4. And it is further ordered, adjudged and determined that the municipal corporation of the of aforesaid, and any returning officer or other person or persons to whom the same shall of right belong, do pursuant to and according to the statute in that behalf cause an election to be as speedily held as shall be lawful for the election to the said

office of _____ in the said _____ of _____, of a person in the place and stead of the said _____ who has been removed from the said office by the said order of [the Master in Chambers,] and that the person or persons to whom the same doth of right belong do administer to the person who shall be so elected the oath in that behalf by law directed, and do admit or cause to be admitted such person so elected into the said office of _____ in said municipality.

Ontario.

Edward the Seventh, &c. (*See No. 1064.*)

To the Sheriff of the County [or United Counties] of _____
Greeting:

We command you, that you levy, or cause to be levied, of the goods and chattels of *C.D.*, of _____, the sum of _____, which hath lately been adjudged to *A.B.* of _____, in our High Court of Justice, at Toronto, according to the form of the statute in such case made and provided, for his costs by him laid out and expended in his defence upon a certain motion in the nature of a *quo warranto*, made unto our said Court against the said *A.B.*, upon the relation of the said *C.D.*, for usurping the office of _____ in our _____ of _____, in your County [or Counties]; [*if the returning officer has been made a party, add here, to which proceeding E.F., the returning officer at the election of the said A.B. to the said office was made a party*], whereof the said *C.D.* is convicted, as in our said Court appears of record; and that you have that money before our said Court at Toronto, immediately after the execution thereof, to satisfy the said *A.B.* for his costs aforesaid, and have you then there this writ.

Witness, &c.

N.B.—When the returning officer has been made a party, and is entitled to costs, the fieri facias must be framed accordingly.

1572

Fi. fa. against relator for defendant's costs.

CHAPTER XXXIII.

QUASHING MUNICIPAL BY-LAWS .....	956

1573

Notice of motion to quash a by-law. (a)

In the High Court of Justice.

In the matter of By-law Number of the Municipality of the
Between, A.B.,

Applicant,

and

The Municipal Corporation of the of
Respondents.

Take notice that a motion will be made before this Court at Osgoode Hall, Toronto, on the day of , 19 , at the hour of ten o'clock in the forenoon, or so soon thereafter as the motion can be made on behalf of the above named applicant A.B., of the of (occupation), for an order that By-law Number passed on the day of , 19 , by the municipal council of the of , and entitled "A By-law to ," be quashed, with costs to be paid by the said municipal corporation, on the following amongst other grounds:—

1-2, &c. (*Set out the grounds fully in separate paragraphs.*)

And take notice that in support of the said motion will be read a certified copy of the said By-law, the affidavits of

filed and the exhibits therein referred to [*where the security is given by recognizance add—and the recognizance (b) of the said A.B., and the affidavits of justification annexed thereto*], [*or, where money is paid into Court, and the certificate of the Accountant*].

Dated the day of , 19 .

(Signed)

Solicitor for the appellant.

To the municipal corporation
of the of

(a) Seven clear days' notice is requisite: 3 Ed. vii. c. 19, s. 378 (2).

(b) As to the recognizance: see 3 Ed. vii. c. 19, s. 378 (4); but see s. 378a. Security may be given by payment of \$100.00 into Court: 3 Ed. vii. c. 19, s. 378 (6).

(Title, &c.: see No. 1573.)

I, A.B., of &c., make oath and say as follows:—

1. I am a resident in and a ratepayer of the (*municipality*) aforesaid.

2. The exhibit now produced and shewn to me and marked Exhibit "A" to this, my affidavit, and under the corporate seal of the said (*municipality*) is a copy of the above mentioned By-law Number of the said certified under the hand of , clerk of the said , which said certified copy of said By-law was delivered to me as such by the said clerk.

3. (*Where security for the costs of the application is given by paying money into Court, it will be convenient to mention the fact in an affidavit to be filed on the motion.*)

(Title, &c.: see No. 1573.)

Province of Ontario, } Be it remembered that on the
County of } of in the year of Our Lord
To Wit:— } 19 , before me,

Judge of the County Court of the County of , come A.B. of the of , in the said County (*occupation*), C.D., of the same place (*occupation*), and E.F., of the same place (*occupation*), and acknowledge themselves severally and respectively to owe our Sovereign Lord the King as follows; that is to say: the said A.B. the sum of \$50.00, and the said C.D. and E.F. the sum of \$50.00 each upon condition that if the said A.B. do prosecute with effect the motion to quash By-law Number of the said (*municipality*), proceedings to that end having been instituted at the instance of the said A.B. against the said municipal corporation of , and if the said A.B. do pay to the said municipal corporation any costs which may be adjudged to it against the said A.B., then this recognizance to be void, otherwise to remain in full force.

Taken and acknowledged the	}	A.B.
day and year first above		C.D.
mentioned, before me		E.F.

Judge of the County of .

1574

Affidavit in support.

1575

Recognizance.

CHAPTER XXXIV.

PETITIONS OF RIGHT.

1576

Petition. (a) In the High Court of Justice.

To the King's Most Excellent Majesty.

The humble petition of *A.B.* (*stating Christian name and surname*) of _____, [by his solicitor, *E.F.*, of _____], sheweth that (*stating with convenient certainty the facts entitling the suppliant to relief*).

Conclusion.

Your suppliant therefore humbly prays that, &c.

The suppliant proposes that the trial of his petition shall take place at the _____ of _____

Dated the _____ day of _____, A.D.

(Signed) _____ *A.B.*
or *C.D.*, Counsel for *A.B.*
or *E.F.*, Solicitor for *A.B.*

(*Stating the usual place of abode of the suppliant, and, if he has a solicitor, the place of business of such solicitor.*)

Con. Rules, 1888, Form 203.

Indorsement. Rule 924.

1577

Indorsement
(b)

The suppliant prays for a plea or answer on behalf of His Majesty within twenty-eight days after the date hereof, or otherwise that the petition may be taken as confessed.

Con. Rules, 1888, Form 204.

1578

Notice to
appear. (c)

Notice to Appear. Rule 925.

To *A.B.*

_____, You are hereby required to appear to the within petition in His Majesty's High Court of Justice within eight

(a) Con. Rules, 1897, Form 186.

(b) Con. Rules, 1897, Form 187.

(c) Con. Rules, 1897, Form 188.

days, and to plead or answer thereto within fourteen days after the date of service hereof.

Take notice, that if you fail to appear or plead or answer in due time, the said petition may, as against you, be ordered to be taken as confessed.

Dated, &c.

Con. Rules, 1888, Form 205.

Appearance. (Rule 926.)

In the High Court of Justice.

Petition of Right.

A.B., suppliant,

v.

The King.

C.D. appears in person, or E.F., solicitor for C.D., appears for him.

(If the appearance is in person, the address of the party appearing to be given.)

Entered the day of , 19 .

Con. Rules, 1888, Form 206.

Certificate of Judgment for Petitioner. Rule 935.

To the Honourable the Treasurer of Ontario.

Petition of right of A.B., in His Majesty's High Court of Justice at Toronto.

I hereby certify that on the day of , A.D. , it was by the said Court adjudged [or ordered] that the above named suppliant was entitled to, &c.

Judge's Signature.

Con. Rules, 1888, Form 207.

(d) Con. Rules, 1897, Form 189.

(e) Con. Rules, 1897, Form 190.

1579

Appearance.
(d)

1580

Certificate of
judgment. (e)

CHAPTER XXXV.

QUASHING SUMMARY CONVICTIONS.

1581

Notice to convicting magistrate of motion for writ of certiorari to remove summary conviction.

In the High Court of Justice.

THE KING v. A.B.

[In the matter of the conviction of A.B. for
(describing the offence).]

Take notice that a motion will be made on behalf of (*insert name and residence of the party convicted*) before the presiding Judge in Chambers at Osgoode Hall in the City of Toronto on [Tuesday or Friday the day of , 19 (*six clear days' notice is necessary (a)*)], at the hour of 10 o'clock in the forenoon, or so soon thereafter as the motion can be heard, for an order that a writ of certiorari do issue to remove into this Court the information and complaint of (*insert name and address of informant*) against (*name of defendant*) tried before , Esq., Police Magistrate (*or as the case may be*) for the on the day of 19 , together with the information, depositions, evidence and record of conviction and all other papers and matters in connection therewith, and process thereunder in order to bring up the said conviction to be quashed upon the grounds following (*set out in paragraphs the several grounds relied upon*).

And upon other grounds appearing on the face of the said proceedings and from the affidavits and papers filed.

And for such further or other order as to the said Judge may seem meet.

And take notice that upon and in support of such application will be read certified copies of the said information, depositions and conviction and the affidavit of verifying same and the affidavit of (*proving grounds not*

(a) R. S. O. 1897 c. 324, s. 37.

apparent from the copies, such as interest of magistrate, objections not noted by him, &c.), this day filed. (a)

Dated

To _____, Esq.,
the above named magistrate. (b)

(*Title, &c., as in No. 1581.*)

(*Formal parts as in No. 744.*)

1. I am the above named (*defendant*).

1582
Affidavit in
support.

2. True copies of the information, evidence, adjudication and conviction, certified as such by _____ the [above named] convicting magistrate [*or one of the (above named) convicting magistrates*] are annexed together and now shewn to me marked Exhibit "A."

3. (*If the application is based upon any ground not appearing on the face of the proceedings, the special facts should be here stated.*)

4. I am not guilty of the offence charged.

(*Title, &c.: see No. 1581.*)

Take notice that a motion is intended to be made before the presiding Judge in Chambers at Osgoode Hall, Toronto, on _____ the _____ day of _____ 19____, at the hour of 10 o'clock in the forenoon, or so soon thereafter as the motion can be made, on behalf of the above named (*defendant*), for an order for the issue of a writ of certiorari to remove into this Court the record of the conviction of the said (*defendant*), you being the informant therein, for that he, the said _____ did on _____ at _____ unlawfully (*setting out the charge*).

1583
Notice to in-
formant. (c)

(a) Not only the affidavits, but the copies of information, &c., whether marked as exhibits or not must be filed before the service of the notice.

(b) Service upon the prosecutor is not necessary and the affidavit of service upon the magistrate must identify him as the person who made the conviction complained of.

(c) This is not a necessary notice, but may be given as suggested in Reg. v. Westgate, 21 Ont. 621.

A true copy of the notice of such motion is hereto annexed.

And further take notice that unless the said conviction be forthwith abandoned so as to save the necessity for further application to the Court to quash the same, and a written consent to the quashing of the same be delivered to the said (*defendant*) or to his solicitors, the costs of the proceedings will be asked against you.

Dated, &c.

Solicitors for the said

To

, Esq.,
the informant.

1584

Order for a writ of certiorari.

In the High Court of Justice.

The Honourable

Mr. Justice

In Chambers.

day the day of 19 .

The King v. *A.B.*

Upon the application of , and upon reading the affidavit of the said and the exhibits thereto, and the notice of this application and the affidavit of service thereof, and the affidavits of and and the exhibits thereto, now filed:—

It is ordered that a writ of certiorari do issue out of the High Court of Justice, directed to , Esquire, Police Magistrate [*or*, one of, His Majesty's Justices of the Peace] in and for the of , and to the Clerk of the Peace for the County of , to remove into the said High Court of Justice all and singular the information, depositions, evidence, conviction and proceedings had and taken against the said before the said as such Police Magistrate [*or*, Justice of the Peace] upon the information and complaint of , upon a charge that he, the said , did on the day of 19 , at the of in the County of unlawfully (*insert charge*).

(*Signature of Clerk of Judge in Chambers.*)

In the High Court of Justice.

The King v. *A.B.*

Edward VII., &c. (*see No. 1064*).

To , Greeting:

We being willing, for certain causes, to be certified of certain conviction and proceedings had before you , Magistrate in and for the of (or as the case may be), as such Magistrate in and for the of against the said *A.B.* on the information and complaint of *C.D.*:

command you, that you send to us, in our High Court of Justice at Toronto, forthwith on the receipt hereof, all and singular the information, depositions, evidence, conviction, orders and proceedings aforesaid, with all things touching the same, as fully and entirely as they remain in your custody or keeping, by whatsoever names the parties may be called therein, together with this Writ, that we may further cause to be done thereupon what of right and according to law we shall see fit to be done.

Witness the Honourable President of our said Court, at Toronto, this day of in the year of our Lord one thousand nine hundred and .

(*Place of issue in the margin and Indorsement as in No. 1064.*)

In the High Court of Justice.

Province of Ontario, }
County of } The King v. *A.B.*
To wit: }

Be it remembered that on the day of , A.D. 19 , personally came before me , one of His Majesty's Justices of the Peace in and for the County of , *A.B.*, of the of in the County of yeoman (or as may be the case), *C.D.*, of the same place [yeoman], and *E.F.*, of the same place, [yeoman], and acknowledged themselves each to owe to our Sovereign Lord the King the sum of \$100 of lawful money of Canada, to be levied upon their goods and chattels, lands and tenements to His Majesty's use upon condition that if the aforesaid *A.B.* shall

1585
Writ of
certiorari.

1586
Recognizance.

prosecute with effect without any wilful or affected delay at his own proper costs and charges a writ of certiorari issued out of the High Court of Justice for Ontario, to remove into the said Court all and singular the records of the trespasses whereof the said *A.B.* was convicted before

Esquire, Police Magistrate in and for the _____ of
 [or, one of His Majesty's Justices of the Peace in and for the
 County of _____ (*or as may be the case*) ; for that [*state the*
charge, e.g., the horses of the said *A.B.* did at the Village of
 _____ on the night of _____ break into the garden
 of _____ and destroy his crops], and shall pay to the
 said [Police Magistrate] and all other persons in whose
 favour the said conviction may be affirmed, all his and their
 full costs and charges to be taxed according to the course of
 the said Court, then this recognizance to be void or else to
 remain in full force and virtue.

Taken and acknowledged the day	}	<i>A.B.</i>
and year first above mentioned		<i>C.D.</i>
at _____ before me		<i>E.F.</i>

J.P.

1587

Attdavit of
 execution.

In the High Court of Justice.

The King v. *A.B.*

I, _____, of the _____ of _____ in the
 County of _____ (*addition*), make oath and say:—

1. That I was personally present and did see the within
 [*or annexed*] recognizance duly signed, sealed and executed
 by _____ and _____, the parties thereto.

2. That said recognizance was duly so signed, sealed and
 executed at the _____ of _____.

3. That I know said parties.

4. That I am a subscribing witness to such execution, and
 that the name of _____ set and described as a
 witness thereto is of the proper handwriting of me this de-
 ponent.

Sworn, &c.

In the High Court of Justice.

1588

Affidavit of
justification
by surety.

The King v. A.B.

I, of the of in the County
of , make oath and say:—

1. That I am the surety proposed and named for the defendant in the recognizance in this matter hereunto annexed.

2. That I am a holder residing at (*street and
number if in city*) of in the County of aforesaid.

3. That I am worth property to the amount of one hundred dollars over and above what will pay all the amount of my debts, and every other sum for which I am now liable or for which I am bail or surety.

4. That I am not bail or surety for any plaintiff or defendant except in this matter [*or, except in a certain action in which is plaintiff and is defendant, in which I am surety to the extent of dollars.*]

5. That my said property to the amount of the said sum of one hundred dollars consists of in the
of in the of the value of about
dollars.

Sworn, &c.,

In the High Court of Justice.

1589

Motion paper
for order nisi
to quash con-
viction.

the day of 19 .

The Hon.

The Hon.

The Hon.

The King v. A.B.

Motion on behalf of the above named defendant A.B., upon reading the writ of certiorari granted herein, the return to the said writ, the affidavits and papers filed in Chambers upon the application for the said writ, and the affidavits of and the recognizance entered into by the defendant filed, for an order calling upon Esq., Police

Magistrate (*or as the case may be*) in and for the of
 and the informant, upon notice to them
 of such order to be served upon them or their solicitors or
 agents to shew cause why the conviction of the said A.B. on
 the information and complaint of for that he, the
 said A.B., did on the day of 19, at
 unlawfully (*set out the charge*), should not be quashed [with
 costs] on the following amongst other grounds:—

1. &c. (*Set out the grounds concisely.*)

X.Y.

Counsel for defendant.

(*Title, &c.: see No. 1581.*)

1590

Order nisi to
quash con-
viction.

Upon the application of the above named A.B., and upon
 reading the writ of certiorari granted herein, the return to
 the said writ, the affidavits and papers filed in Chambers
 upon the application for the said writ and the [recognizance
 entered into by the defendant, or certificate of the Account-
 ant (a)], and the affidavits of , filed.

1. It is ordered that , Esquire, Police Magistrate,
 [or , Esquire, and
 Esquire, two of His Majesty's Justices of the Peace, *or as the
 case may be*] in and for the and , the
 informant, do upon notice to them of this order to be served
 upon them, their solicitors or agents, shew cause why the con-
 viction of the said A.B. on the information and complaint of
 said for that he the said A.B. did on the
 day of , 19, at un-
 lawfully (*set out the charge*), should not be quashed with costs
 on the following amongst other grounds:—

1. &c. (*Set out the grounds concisely.*)

On the motion of Mr. , counsel for the de-
 fendant.

By the Court.

(*Signature.*)

Registrar.

(a) See Holmested & Langton Jud. Act (2nd ed.), p. 1345, and
 1 Ed. vii. c. 13, ss. 3 & 5.

1591

Order absolute quashing conviction.

In the High Court of Justice.

day the day of 19 .

The Hon. .

The Hon. .

The Hon. .

The King v. *A.B.*

Upon reading the order nisi granted [*or, notice of motion given*] in this matter, and the affidavits of service thereof, and upon hearing counsel for the defendant and for the convicting magistrate [*the Police Magistrate for, or as the case may be*].

1. It is ordered that a certain conviction of above named by , Esquire, Police Magistrate [*or, one of Her Majesty's Justices of the Peace, as the case may be*], in and for the of , on the information of one for unlawfully (*set out charge*), be and the same is hereby quashed.

2. (*Where costs are ordered a clause directing their payment may be inserted here.*)

3. (*Where ordered*) And it is further ordered that pursuant to the provisions of section 11 of chapter 88, Revised Statutes of Ontario, and of section 891 of the Criminal Code, no action shall be brought against the said (*name of magistrate*) or (*name of informant*).

On motion of Mr. , of counsel for said ,

By the Court.

(*Signature.*)

Registrar.

(*Title, &c.: see No. 1581.*)

1592

Take notice (*as in No. 403 or No. 1581*) for an order vacating and quashing the writ of certiorari issued herein, and for an order directing the return to the Clerk of the Peace for the County of , of the conviction and other papers returned by him in pursuance of the said writ, or for the issue of a writ of procedendo herein, on the ground that [*the defendant has failed and neglected to proceed upon the return of the said writ within due time, or as may be*],

Notice of motion to vacate writ of certiorari.

and for an order for payment by the defendant to the applicant [*or*, to the convicting magistrate] of his costs of the application for the said writ and of this motion, or for such other order as may seem just.

And take notice that upon such motion will be read the affidavits of

Dated, etc.

Solicitor for the informant
or the convicting magistrate.

To

Solicitor for the defendant.

A notice of motion to set aside an order or a writ of certiorari and for a procedendo may be framed from No. 1592 (a).

1593

Writ of procedendo. (b)

Edward the Seventh, &c. (*as in No. 1064*).

To _____, the Justices of the Peace in and
for the County of _____, and to (*naming the particular Justices*), and to every of you.

Greeting:

Although being willing to be certified of a certain conviction made by you, the said _____, on the _____ day of _____ convicting one _____ for that he did [at the Township of _____ in the County of _____ on the _____ day of _____ last, keep liquor for sale, barter and traffic without the license required by law, *or as may be the case*], we lately by our writ commanded you (*as in the writ of certiorari*). Yet for certain reasons us thereunto moving we do command you and every of you forthwith to proceed upon the said conviction according to law. our said writ to you before directed to the contrary in anywise notwithstanding.

Witness, &c. (*See Form 1585.*)

(a) Where the defendant has failed to proceed under the order and has not issued or served a writ of certiorari.

(b) A writ is generally not required (see *Crim. Code*, sec. 895), but may in some cases be necessary as, for instance, where a certiorari has been obtained and the proceedings forwarded, but no further proceedings are taken to quash the conviction.

CHAPTER XXXVI.

HABEAS CORPUS.

In the High Court of Justice.

The King v. A.B.

In the matter of the conviction of on the
 day of for that he did, &c.
(*setting forth particulars of the conviction with necessary dates, place of commission of offence, &c.*).

Take notice that by the leave of the Honourable Mr. Justice , a motion will be made, &c. (*as in No. 1581*), whereon you are required to shew cause why a writ of *habeas corpus* should not issue to the keeper of the common gaol of the County of (*or as the case may be*). directing him to have before a Judge of the High Court of Justice for Ontario the body of the above named , a prisoner detained in his custody, that the Court may cause to be done thereupon what of right and according to law the Court shall see fit to be done, [and why a writ of certiorari in aid thereof should not issue] for the following amongst other reasons:—

(1) &c. (*set forth the reasons concisely*).

And take notice, &c. (*as in No. 1581 or 403*).

Dated, &c.

(*Signed*)

Solicitors for defendant.

To the Attorney-General for the Province of Ontario.

And to

Convicting magistrate.

(*See No. 1582.*)

(*The affidavit should also identify a copy of the warrant of commitment and should contain a paragraph stating that the prisoner is confined in the County gaol (or as may be) upon the offence mentioned in the conviction and commitment.*)

(c) Notice is not always necessary.

1594

Notice of motion for a writ of habeas corpus. (c)

1595

Affidavit in support.

1596

Writ of habeas corpus, under 31 Car. ii, c. 2, or R.S.O. 1897 c. 83. Edward the Seventh, &c. (*see Form No. 1064*).

To _____, Esquire, Keeper of the Common Gaol of the
County of _____ [or Warden of the Central Prison,
or as the case may be], Greeting:

We command you that you have before any Judge of the High Court of Justice for Ontario presiding in Chambers at Osgoode Hall, Toronto, immediately after the receipt of this writ, the body of *A.B.*, detained in your custody, as it is said, under safe and secure conduct, together with the day and cause of his being taken and detained by whatsoever name he may be called or known therein, together with this our writ, that he may further cause to be done thereupon what of right and according to law we shall see fit to be done.

Witness the Honourable, &c.: *see Form No. 1064*.

(*To be inserted in the margin*):

Per statutum tricesimo primo Caroli Secundi Regis. (a)

(*Signature of Judge awarding writ.*) (a)

Issued from the _____ Office of the High Court of
Justice for Ontario at _____ in the County of _____,
pursuant to the order of the Honourable Mr. Justice _____.

Dated the _____ day of _____, 19 _____.

(*To be indorsed.*)

This writ was issued by _____ of the _____ of
in the County of _____, Solicitor for the above named
A.B.

(a) 31 Car. c. 2, s. 2, (R. S. O. 1897 vol. 3, p. xxxvii.). This mode of marking, and the signature of the Judge awarding the writ, would not seem to be necessary where the writ is issued under R.S.O. 1897 c. 83.

1597

I hereby dispense with the production of the body of the within named *A.B.* in pursuance of the within writ.

Dated, &c.

(Signed)

Solicitor for *A.B.*

Indorsement
dispensing
with produc-
tion of the
body.

1598

I, The Honourable
Mr. Justice
In Chambers.

day the day of 19

Order for a
writ of habeas
corpus.

The King v. *A.B.*

Upon the application of the defendant, and upon reading the affidavits of (defendant), &c., filed, and upon reading the conviction and proceedings had before Police Magistrate [*or Justice of the Peace*] in and for the of , and upon hearing counsel for the defendant:—

It is ordered that a writ of *habeas corpus* do issue out of the High Court of Justice, directed to the Keeper of the Common Gaol of the of (or to the head official of whatever place the prisoner is detained in) directing him to have before a Judge of the High Court of Justice for Ontario presiding in Chambers at Toronto, forthwith after the receipt of the said writ, the body of , a prisoner detained in the custody of the said Keeper of the Common Gaol, that this Court may cause to be done thereupon what of right and according to law it shall see fit to be done.

And it is also ordered that a writ of *certiorari* [in aid thereof] do issue out of the High Court of Justice at Toronto, directed to , Esquire, Police Magistrate (or, one of, &c.), in and for the of , and to the Clerk of the Peace for the said County of , to remove into the High Court of Justice all and singular the information, depositions, evidence, conviction and proceedings had and taken against the said , before the said , as such Police Magistrate (or Justice of the Peace), upon the information and complaint of , upon a charge that he, the said , did on the day of , 19 , at the of , in the County of , unlawfully (insert charge).

Writ of cer-
tiorari in aid.
(b)

(Signature of Clerk in Chambers.)

(b) See R. S. O. 1897 c. 83, s. 5.

1599

Order for a writ of certiorari in aid of a writ of habeas corpus.
(a)

In the High Court of Justice.

(Name of Judge)

In Chambers.

the day of , 19 .

The King v. *A.B.*

Upon the application of _____ of the _____ of _____, in the County of _____, a prisoner now confined in close custody in the [Common Gaol of the County of _____], at the _____ of _____, and upon reading the affidavits of the said _____, and of _____, with the papers to the said affidavits attached, all this day filed, and a writ of *habeas corpus* having been issued to bring the body of the said _____ before the Judge of this Court presiding in Chambers at Osgoode Hall, Toronto.

It is ordered that in aid of the said writ of *habeas corpus* of _____, do forthwith send to the Registrar of the High Court of Justice at the Central Office of the High Court at Toronto, all and singular the _____ and all subsequent proceedings taken upon the said _____ and any writ or other proceedings taken in the said Court pursuant to the said last mentioned _____, with all things touching the same, together with this order, that this Court may further cause to be done thereupon what it shall see fit to be done.

2. And it is further ordered that the costs of this application do abide the further order of the Court.

1600

Notice of motion for discharge of prisoner on return of the writ.

(Title, &c.: see Form 1594.)

Take notice that by leave of the Honourable Mr. Justice _____, this day given, an application will be made for the discharge of the above named defendant, *A.B.*, from the [Common Gaol of the County of _____], upon the return of the writ of *habeas corpus* this day issued in pursuance of the order of the Honourable Mr. Justice _____, directing the keeper of the [Common Gaol of the County of _____] or the Warden of the Central Prison, or as the case may be], to

have before one of the Judges of the High Court of Justice the body of the above named *A.B.*, now in custody under a warrant of commitment issued in pursuance of a conviction made by _____, Esquire, Police Magistrate (*or as the case may be*), in and for _____, upon a charge that he the said *A.B.*, on the _____ day of _____, 19____, at _____ in the County of _____, unlawfully did (*stating the charge*).

And take notice that in support of such application will be read the return to the said writ of *habeas corpus* [and the return to the writ of *certiorari* issued in aid thereof], and the affidavits of _____, &c.

Dated, &c.

(Signed)

Solicitors for defendant.

To the Attorney-General
for the Province of Ontario.

1601

Order for discharge.

In the High Court of Justice.

The Honourable _____ } day the _____ day of _____, 19____.

The King v. *A.B.*

Upon the application of _____, of the _____ of _____, in the County of _____, and upon reading the answer of _____ (*name of Keeper or Warden of place of detention*) to the writ of *habeas corpus* dated the _____ day of _____, 19____, and the warrant of commitment attached thereto, dated the _____ day of _____, and filed.

2. It is ordered that the said _____ be discharged out of the custody of the Keeper [*or, Warden, as the case may be*] of the _____, in and for the _____ of _____, as to his commitment for (*set out offence*) in so far as he is held under the above mentioned warrant of commitment, and that this order be sufficient authority to the said Keeper [*or, Warden*] for the discharge of the said _____.

CHAPTER XXXVII.

BAIL (a).

1602

Order for bail. In the High Court of Justice.

(Name of Judge.) } the
In Chambers. } day of A.D. 19 .

THE KING v. A.B.

1. Upon the application of the above named , and upon hearing counsel for the applicant and for the Attorney-General for the Province of Ontario, and upon hearing read the wherewith the prisoner has been charged, together with a copy of the warrant of commitment under the hand and seal of of His Majesty's Justices of the Peace in and for the , whereby the prisoner was committed for trial on the charge of , preferred by , and counsel for the Attorney-General.

2. It is ordered that upon the said , entering into a recognizance before two Justices of the Peace in and for the said , himself in the sum of dollars and sufficient sureties in dollars each, to the satisfaction of the Crown Attorney in and for the , the said be admitted to bail to appear for trial at the next Court of competent jurisdiction in and for the said .

1603

Recognizance
after indictment
by the
Grand Jury.

Canada, Province of Ontario, Be it remembered that on the
[County of day of in the year
or, City of .] of our Lord one thousand
To wit: nine hundred and

(prisoner) and (two sureties)

personally came and appeared before us, the undersigned, Esquires, two of His Majesty's Justices of the Peace in and for the said [City], and severally acknowledged themselves to

(a) An application for bail is made by an ordinary notice of motion to a Judge of the High Court in Chambers upon notice to the Attorney-General for Ontario.

owe to our Sovereign Lord the King, his heirs and successors, the several sums following, that is to say: the said (*prisoner*) the sum of dollars, and the said (*surety*) and (*surety*) the sum of dollars each, of good and lawful current money of Canada to be made and levied of their several goods and chattels, lands and tenements respectively, to the use of our Sovereign Lord the King, his heirs and successors, if he the said (*prisoner*) fails in the conditions hereunder written.

Taken and acknowledged the day and year first above mentioned, at the said [City of Toronto], before me. }	(seal) (seal)
--	----------------------

Condition.

The condition of the above written recognizance is such, that whereas the said (*prisoner*) was indicted by the Grand Jury at the Criminal Assizes for that he did, &c. If, therefore, the said (*prisoner*) appears at the next Court of Oyer and Terminer or sittings of the High Court of Justice for the trial of criminal offences, or Court of General Sessions of the Peace, to be holden in and for the said [City of Toronto] and County of [York], and there surrenders himself into the custody of the keeper of the Common Gaol there, and takes his trial upon such indictments as may be found against him by the Grand Jury for and in respect to the charges aforesaid, and does not depart the said Court without leave, then the said recognizance to be void, otherwise to stand in full force and virtue.

Notice to Defendant and Sureties.

Province of Ontario, } Take notice that you (*prisoner*)
City of Toronto, } are bound in the penal sum of
To wit: } dollars, and your sureties in
the sum of dollars each, that you (*prisoner*) appear at the next Court of Oyer and Terminer or sitting of the High Court of Justice for the trial of criminal offences, or Court of General Sessions of the Peace, to be holden in and for the said City of [Toronto] and County of [York], and do not depart the said Court without leave. And unless you, the said (*prisoner*) personally appear and take your trial accordingly, the amount mentioned in the recognizance entered

1604

Notice to defendant and his sureties.

into by you (*prisoner*) and your sureties and shall
be forthwith levied on you and them.

Dated at the City of Toronto, this day of
one thousand

(*seal.*)

(*seal.*)

1605

Warrant for
release from
custody after
recognizance
of bail given.

Canada, To the Keeper of the Common
Province of Ontario, Gaol of the County of (*or as*
County of } *the case may be*).
To wit:

Whereas *A.B.* of the of , hath before us,
C.D. and *E.F.*, Esquires, two of His Majesty's Justices of
the Peace in and for the said , entered into his own
recognizance and found sufficient sureties for his appearance
at the next Court of competent jurisdiction to be holden in
and for the and County of , to answer to Our
Sovereign Lord the King for that he the said *A.B.* on the
day of , in the year of Our Lord one thousand
nine hundred and , did (*set out the offence charged*) for
which he was taken and committed to the said common gaol
(*or as may be the case*).

These are therefore to command you in His Majesty's
name that if the said *A.B.* do remain in your custody in the
said common gaol for the said cause and for none other, you
shall forthwith suffer him to go at large.

Given under our hands and seals this day of
in the year of Our Lord One thousand nine hundred and
at , in the County of aforesaid.

(*Signed*) *C.D.* (*seal*) (*a*).

(*Signed*) *E.F.* (*seal*)

(*a*) One Justice may sign this warrant.

COSTS.

Praecipe order for security for costs (Rule 1199).

the day of , A.D. 19 .

A.B.

and

C.D. (and *E.F.*)

plaintiff,

defendants.

1. Upon application of the defendant *C.D.*, and it appearing by the indorsement on [the copy of the writ of summons] served on said defendant, that the said plaintiff resides at _____, out of the jurisdiction of this Court:

2. It is ordered, that the plaintiff do within four weeks from the service of this order, give security on behalf, in the penal sum of four hundred dollars, to answer the said defendant costs of this action, and that all proceedings be in the meantime stayed.

3. And it is further ordered, that in default of such security being given by the plaintiff this action be dismissed [as against such defendant] with costs, unless the Court or Judge upon special application for that purpose otherwise orders.

(Signature)

Clerk of the Crown and Pleas *or* Clerk of Records

and Writs or other proper officer.

(Court and style of cause.)

I hereby on behalf of the defendant require that the plain- Demand of
tiff do give the defendant security for the costs of this action, security for
costs.

(b) See Con. Rule 1198.

(c) Con. Rule, 1897, Form 95.

1606

Præcipe order
for security
for costs. (c)

otherwise I shall apply for an order to compel the plaintiff to give such security (a).

Dated, &c.

Yours, &c.,

(Signed)

Defendant's solicitor.

To

Plaintiff's solicitor.

(Formal parts: see No. 403.)

1608

Notice of motion for security for costs where residence is not correctly stated in writ.

on the part of the defendant *A.B.*, that the plaintiff [*or*, that *C.D.*, the next friend of the plaintiff] may be ordered, within one week, to give the usual security to answer costs, by reason of his place of residence or abode not being stated [*or*, correctly stated] in the writ of summons [*or* petition, *or as may be*] in the action [*or* matter], or in default that this action [*or* matter] be dismissed with costs [*if there are other defendants add* as against the said defendant], and that, in the meantime, proceedings be stayed [*if there are other defendants, add: as against the said defendant*]. And take notice, that on such motion will be read (&c., *as in No. 403*).

(Formal parts: see No. 403.)

1609

Notice of motion for security for costs of a proceeding by petition.

on the part of the defendant *A.B.*, who has been served with the petition preferred by *C.D.* in this cause [*or*, matter] on the 19th, that the said *C.D.* [*or*, that *E.F.*, the next friend therein of the said *C.D.*] may be ordered to give the usual security to answer costs; and that the said petition may stand over till such security is given. And take notice, that on such motion will be read (&c., *as in No. 403*).

(a) Where it appears on the face of a writ that the plaintiff is permanently resident out of the jurisdiction, an order for security for costs may be obtained on *præcipe*, Rule 1199, but if such residence is stated to be only temporary, a special application is necessary. See *Wilson v. Wilson*, 6 P. R. 152.

(*Formal parts: see No. 403.*)

on the part of the defendant *C.D.* [*or A.B., in the order* **1610**
dated the day of , 19 , (*order directing the* Notice of mo-
tion to in-
crease se-
curity. (b)
security to be given) named], that the plaintiff [*or, A.B., in*
the said order named], may be ordered within [fourteen]
days (*a*), to give further security to the extent of \$,
to answer costs; and that, in the meantime, proceedings be
stayed [*if there are other defendants or respondents, add: as*
against the said *A.B.*].

And that in default of such security being given the plain-
tiff's action [*or, notice, or petition, as may be the case*], may be
dismissed [*if there are other defendants or respondents, add: as*
against the said *A.B.*] with costs to be paid by the said *C.D.*
to the said *A.B.* And take notice, that on such motion will
be read (&c., *as in No. 403*).

(*Formal parts: see No. 403.*)

on the part of the defendant *A.B.* [*or, of A.B., in the order* **1611**
dated the of , 19 , (*order directing former* The like, for a
new security
to be given on
death or in-
solventcy of
obligor.
security to be given) named], that the plaintiff [*or, that C.D.,*
in the said order named] may be ordered, within [fourteen]
days, to procure some sufficient person on his behalf to give
a new security to answer costs, in lieu of, or in addition to,
the bond, dated the of , 19 , given pursuant
to the said order by *E.F.*, who has since died [*or, become insol-*
vent—*or as may be*]; and that, in the meantime, proceedings
be stayed [*if there are other defendants, add: as against the*
said *A.B.*] [*or, in the case of a petition, say: and that the said*
petition may stand over until such security is given]. And
take notice, that on such motion will be read (&c., *as in No.*
403).

(*Formal parts: see No. 744.*)

1. *E.F.*, the obligor in the bond dated the of , **1612**
19 , which was given as security for costs, pursuant to the Affidavit in
support.

(*b*) See Rules 1201, 1202 and *Kennedy v. Edwards*, 11 Jur. N.S.
153.

order in this cause [*or, matter*], dated the of , 19 , has since died [*or has since become an insolvent*].

2. The plaintiff [*or, A.B.*, the person required by the said order to give security for costs], is still permanently resident at , out of the jurisdiction of this Honourable Court [*or as may be*].

(*Shew means of knowledge.*)

1613

Bond as security for costs. (a)

Know all men by these presents, that I, *C.D.* (a) of (*place of residence and addition*), am held and firmly bound [*or, if more than one obligor, say: that we, A.B., of &c., (the plaintiff, or other party giving security if he executes the bond), C.D., of, &c., and E.F., of, &c. are jointly and severally held and firmly bound*] to *G.H.* (*insert name of party requiring the security*), in the perral sum of four hundred dollars (*or other sum mentioned in the order*), of good and lawful money of Canada, to be paid to the said *G.H.*, his certain attorney, executors, administrators, or assigns: For which payment well and truly to be made, I bind myself, and my [*or, we bind ourselves, and each of us, our and each of our*] heirs, executors and administrators, firmly by these presents, sealed with my seal [*or, with our seals*].

Dated this day of , 19 .

Whereas by an order of the High Court of Justice, dated the day of , 19 , and made in an action wherein *A.B.* is plaintiff [*or A.B. and another—or, others—are plaintiffs*], and *G.H.* is defendant [*or, G.H. and another—or, others—are defendants—or, in a matter intituled, &c.*], on the application of [the defendant] *G.H.*, it was ordered that (*recite the mandatory part of the order directing the security to be given*).

[*Where the plaintiff or other party giving security does not execute the bond, And whereas the above bounden C.D. [or, the above bounden C.D. and E.F. have], at the request of the said (A.B. or other person required to give security), agreed to enter into the above written obligation, subject to the condition hereinafter contained*] :

(a) If the plaintiff or other party required to give security, does not actually execute the bond he ought not to be named as a party: see H. & L. notes to Con. Rule 1205.

Now the condition of the above written obligation is such Condition. (b) that if the above bounden *C.D.*, his [*or, if the above bounden [A.B.], C.D., and E.F., or either of them, their or either of their*] heirs, executors or administrators, do and shall well and truly pay, or cause to be paid, to the defendant [*or to all the defendants*] in the said cause, all such costs as the said Court shall think fit to award to the said defendant [*or defendants or to any or either of them, or as may be*], in the said cause [*or, matter—or as may be*]: then the above written obligation is to be void, otherwise to remain in full force and virtue.

Signed, sealed and delivered in the presence of X.Y., of (<i>residence</i>). }	[<i>A.B. (seal)</i>]. [<i>C.D. (seal)</i>]. [<i>E.F. (seal)</i>].
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(*Short style: see No. 26.*)

Take notice that I have this day deposited in the Central Office, Osgoode Hall, Toronto [*or, with the Deputy Clerk of the Crown, or Deputy, or Local Registrar*] the bond of *C.D.*, of [*residence and addition as in bond—or A.B., of, &c., C.D., of, &c., and E.F., of, &c., as may be the case*], conditioned to answer costs, pursuant to the order dated the of , 19 (*order directing bond to be given*), and that the [*insert name of proper officer as*] Clerk of the Crown and Pleas, Deputy Clerk of the Crown, &c., will consider the allowance of the said bond at this office, Osgoode Hall [*or the Court House, or as may be*] on day next the day of 19 , at the hour of o'clock in the noon, when you are required to attend.

Dated, &c.

Yours, &c.,

To

Y. Z.,

Plaintiff's solicitor.

(b) See Braithwaite's Pr. 531, and *Beaton v. Boomer*, 1 U. C. L. J. N. S. 108.

1615

Affidavit of
proposed
obligor, in
justification.

(*Formal parts: see No. 744.*)

1. I am the obligor named in the bond dated the _____ of _____, 19____, in the penalty of \$400 (*or as may be*), conditioned to answer costs in this cause [*or, matter*], pursuant to the order of the _____ 19____.

2. I am a resident inhabitant of Ontario, and am a householder in [*or, freeholder in* _____], and I am worth the sum of \$400 (*or, the amount of security directed*), of lawful money of Canada, over and above what is sufficient to pay all my just debts.

1616

Notice of pay-
ment into
Court as
security. (a)

(*Formal parts: see No. 1614.*)

Take notice that I have this day paid into Court the sum of \$ _____ (*b*), to answer costs, pursuant to the order herein for security for costs, dated the _____ day of _____ 19____.

Dated, &c.

1617

Notice of mo-
tion for leave
to pay money
into Court, in
lieu of bond.
(c)

(*Formal parts: see No. 403.*)

on the part of the plaintiff [*or, of A.B., in the order dated the _____ of _____ 19____, (order directing security to be given)*] named], that in lieu of the usual security directed to be given by the order dated the _____ of _____, 19____ [*or, by the said order*], he may be at liberty, within [ten] days, to pay \$ _____ into Court, to the credit of [this action, *or matter*] as security to answer costs, in case any costs shall be awarded to be paid by him. And take notice, that on such motion will be read (&c., *as in No. 403*).

(a) See Rule 1207.

(b) Not less than half the penalty, if a bond were given: Rule 1207.

(c) No special order is necessary unless the party desires to pay in less than half the amount of the penalty of the bond required: see Con. Rule 1207.

(*Formal parts: see No. 403.*)

on the part of the plaintiff, that notwithstanding the order dated the _____ of _____, 19____, directing security for costs to be given by him, he may be at liberty to amend the proceedings herein by inserting his present residence: he being now resident at (*state where*), within the jurisdiction of this Honourable Court and that thereupon the said order may be discharged. And take notice, that on such motion will be read (*&c., as in No. 403.*).

1618
Notice of motion to discharge order for security.

(*Formal parts: see No. 403.*)

on the part of the plaintiff, that the order dated the day of _____, 19____, directing security for costs to be given by him, may be rescinded on the ground that the plaintiff is owner of property within the jurisdiction of this Honourable Court which is amply sufficient for the payment of any costs which may be awarded to the defendant in this cause, and take notice that on such motion will be read (*&c., as in No. 403.*).

1619
Notice of motion to discharge order for security on the ground that the plaintiff has property within the jurisdiction

(*Formal parts: see No. 744.*)

1. I am seised in fee simple of, and am solely and beneficially entitled in fee simple to, the following real estate situate within the jurisdiction of this Honourable Court, viz. (*giving a specific description*).

1620
Affidavit in support by the plaintiff. (*d*)

2. The said lands are free from incumbrances, and are worth the sum of \$ _____, and would, I verily believe, bring that amount if sold at a forced sale.

(*d*) If the affidavit is made by some other person than the plaintiff, it should shew the deponent's means of knowledge. The property must be of such a character as to be available in execution.

1621

Bond of indemnity
against costs.

Know all men by these presents, &c. (*see No. 1613*).

Whereas an action is now pending in the High Court of Justice for Ontario in the names of the said (*obligee*) and the above bounden (*obligor*) against

And whereas by an order in said action dated the day of it was ordered that all further proceedings in the said action be stayed until the said (*obligor*) should have given to the said (*obligee*) such indemnity against the costs of the said action as (*according to the terms of the order*).

And whereas it has been agreed that such an indemnity be given by entering into the bond or obligation herein contained.

Now the condition of the above written bond or obligation is such that if the above bounden (*obligor and sureties*), or some or one of them, or the heirs, executors or administrators of them, or of some or one of them, do and shall save harmless and keep indemnified the said (*obligee*), his heirs, executors, administrators and assigns, and his and their lands and tenements, goods and chattels of, from and against all costs in the said action, and all judgments, orders, executions, actions, claims and demands whatsoever touching or relating to any such costs or any part thereof, and from all losses, claims, costs, charges and expenses which he or they respectively may bear or incur by reason of the nonpayment of any such costs as aforesaid, then the above written bond or obligation to be void, otherwise to remain in full force and virtue.

SECTION II.—TAXATION OF COSTS—(PARTY AND PARTY).

(*Formal parts: see No. 744.*)

1622

Affidavit of
disburse-
ments. (a)

1. Notice of trial was given in this action for the sittings of this Court holden at in the County of for the trial of actions [*if so, without a jury*], and the same was tried before on the day of A.D. 19 .

(a) To be made by the party whose costs are being taxed, or his solicitor or clerk having the management of the cause as may be necessary: *see* Con. Rule 1173.

2. A subpoena was issued on the part of the said and the several persons, whose names are set forth in the first column of the Schedule indorsed hereon were each of them severally subpoenaed as witnesses on the part of the said at the several places mentioned in the fourth column of the said Schedule.

3. All the said witnesses were necessary and material witnesses for the said and did attend at the said time and place when the said cause was so disposed of, and they did not attend as witnesses in any other action to my knowledge and belief (*or otherwise as the case may be*).

[3a. Where the solicitor of the party whose costs are being taxed attended as witnesses, I [*or A.B.*, the solicitor for the herein] attended at the said [trial] solely as a witness for the and as his solicitor, and did not attend as either a witness or as solicitor in any other cause, and had no other business at the said place during the time [*I or he*] so attended at the said [trial] (*or otherwise as the case may be*)].

4. The usual place of abode of each of the said witnesses is distant from the place of trial aforesaid, the number of miles set opposite to his or her name in the third column of the said Schedule, and their respective places of abode are the places mentioned in the second column of the said Schedule.

5. Each of the said witnesses necessarily travelled in going to and returning from such the number of miles set opposite to his or her name in the fifth column of the said Schedule.

6. Each of the said witnesses was necessarily absent from his or her respective place of abode in going to, staying at and returning from such the number of days set opposite to his or her name in the sixth column of the said Schedule.

7. I paid each of the said several witnesses for his or her loss of time, trouble and expenses in going to, remaining at, and returning from the said the sum set opposite to his or her name in the seventh column of the said Schedule.

8. The said (*professional persons, if any*) were [*or was*] subpoenaed and called upon to give evidence in this action in consequence of professional services rendered by .

[8a. For the purpose of the trial of this action I procured to be made a plan now shewn to me and marked Exhibit "A"].

Certificate of Taxation.

(Title, &c.)

1623Certificate
of taxation. (a)

I certify that pursuant to [the judgment *or* order herein
dated *or* the request of the Master in Ordinary, *or as may be*],
I have taxed the costs of the at \$

Dated, &c.

Con. Rules, 1888, Form 212.

1624Objections
to taxation.

In the High Court of Justice.

(Shortened style of cause: see No. 25.)

Objections taken by the plaintiff [*or* defendant] to the
taxation by , Esq., one of the taxing officers
of this Court, of the bill of costs of the plaintiff [*or* defend-
ant] under the judgment [*or* order], dated the day
of 19 .

The plaintiff [*or* defendant] objects to the [allowance *or*
disallowance] of the items in the said bill of costs mentioned
in the second and third columns, hereunder written, for the
following reasons:—

No. of objec- tion.	Page of bill.	No. of Items.	Reasons for Objection.
1	1	1 to 6	These items are properly chargeable under the or- der which gives the plaintiff his costs, charges and expenses.
2	2	10	The attendance was taken for the purpose of sav- ing expense, and further expense was thereby avoided.
3	4	50	This item is in accordance with the tariff.
4	6	90	The inspection of documents was necessary to en- able the plaintiff to prepare his case, and he obtained information so as to (<i>set this out</i>), which was of material assistance to him on the trial.
5	7	110	The affidavit was necessary and was used on the hearing of the motion, and entered in the order.
6	8	120	This item is in the discretion of the Master and under the special circumstances (<i>set out what these circumstances are</i>) should be allowed.

Dated this day of 19 .

To Mr. C.D.,
Defendant's solicitor.

Yours, &c.,
A.B.,
Plaintiff's solicitor.

SECTION III.—TAXATION OF COSTS—(SOLICITOR AND CLIENT.)

1625

Præcipe for
order for tax-
ation of a
solicitor's
bill.

In the High Court of Justice.

In the matter of Mr. A.B., one of the solicitors
of the Supreme Court of Judicature for
Ontario.

Required the common order for taxation by the (a),
of the bill of fees, charges and disbursements of the said
A.B., delivered to C.D., on the day of 19 .

Dated, &c.

Solicitor for C.D. or for A.B.,
or A.B. in person.

*Praecipe Order to tax a Solicitor's Bill delivered (on Client's
application. (Rule 1184.)*

1626

Præcipe order
for taxation of
solicitor's bill
(on client's
application).
(b)

In the High Court of Justice.

the day of , A.D. 19 .

In the matter of A.B., one of the solicitors of
the Supreme Court of Judicature.

1. Upon the application of , and the applicant sub-
mitting to pay what, if anything, shall be found due to the
said solicitor upon taxation of the bill hereinafter mentioned.

2. It is ordered that the bill of fees, charges and disburse-
ments, delivered to the applicant by the above named solicitor
be referred to to be taxed.

*The same (on Solicitor's Application). (Rule 1184.)
(Title, date, &c., as in Form 1626.)*

1627

The like on
solicitor's
application.(c)

1. Upon the application of the above named solicitor .
2. It is ordered that the bill of fees, charges and disburse-
ments, delivered by the said solicitor to be referred
to to be taxed.

(a) The reference for taxation should be to a taxing officer for the
county in which the solicitor resides: Con. Rule 1187.

(b) Con. Rules 1897, Form 99.

(c) Con. Rules, 1897, Form 100.

(Formal parts: see No. 1625.)

1628

Required the common order directing Mr. A.B., within a fortnight after notice thereof, to deliver to (*applicant*) a bill of all such fees, charges and disbursements as he claims to be due to him from (*applicant*); and referring it to (d), to tax the same.

Præcipe for order of course, by party chargeable, for delivery of a bill and taxation.

Dated, &c.

(Signed) A.B. (in person),
(or, solicitor for).

To the [Clerk of Records and Writs] (or as may be necessary).

Præcipe Order for delivery and taxation of a Solicitor's Bill of Costs. (Rule 1184.)

(Title, date, &c., as in Form 1626.)

1629

1. Upon application of , and the applicant by his solicitor submitting to pay what, if anything, shall be found due to the said A.B. upon the taxation of the bill hereinafter mentioned.

The like for delivery and taxation of a bill. (e)

2. It is ordered that the above named A.B. do, within fourteen days from the service of this order, deliver to the applicant a bill of his fees, charges and disbursements and that the same, when delivered, be referred to the to be taxed.

(Formal parts: see Nos. 902 and 1626.)

1630

1. It is ordered that the bill of fees, charges, and disbursements delivered to the applicant by the above named solicitor be referred to Mr. , one of the taxing officers of the Supreme Court of Judicature [or to the at] to be taxed.

Order on client's application after one month from delivery of a bill.

2. (Any special provisions as may have been ordered.)

(d) A taxing officer for the county in which the solicitor resides: Con. Rule 1187.

(e) Con. Rules 1897, Form 101.

1631

Notice of motion by a party for an order for delivery of a bill of costs by a solicitor.

In the High Court of Justice.

In the matter of *A.B.*, one of the solicitors of the Supreme Court of Judicature.

(*Formal parts: see No. 403.*)

for an order that the above named solicitor do within days, or such other time as may seem just, deliver to the applicant or to his solicitor [*or to the applicant as executor (or administrator) of C.D., deceased*] a bill of costs of all causes, matters and business in which he has been concerned for the applicant [*or the said C.D. or in any particular matter as may be required*], and that he give credit therein for all moneys by him received from or on account of the applicant *or* the said *C.D.*].

And take notice, &c. (*as in No. 403.*)

1632

Notice of motion by a party beneficially interested to tax a delivered bill, where more than a month has elapsed since its delivery.

(*Formal parts: see Nos. 403 and 1630.*)

for an order that it may be referred to one of the taxing officers of the Supreme Court (*or as may be proper*) (*a*), to tax and settle the bill of fees, charges and disbursements, amounting to the sum of \$, delivered by the said *A.B.* to *C.D.*, as the trustee [*or, executor*] of the will [*or, administrator of the personal estate*] of *G.H.*, deceased (*or as may be*); which the said *C.D.* has paid [*or, claims to be entitled to pay*] out of property in which the applicant is interested, with all usual directions as to costs, and otherwise.

And take notice that on such motion will be read (&c., *as in No. 403.*)

1633

Notice of motion for the taxation of an unpaid bill, after a year from delivery.

(*Formal parts: see No. 1630.*)

for an order that it may be referred to one of the taxing officers of this Court to tax the bill of fees, charges and disbursements, amounting to the sum of \$, delivered on or about the day of , 19 , to the applicant by the above named *A.B.*, of (*place of residence*), as his solicitor.

2. [*Any special provisions desired, such as, e.g., and that upon such taxation the applicant be at liberty to dispute the retainer of the said solicitor in regard to the action commenced (as may be) charges in respect to which are contained in the said bill.*]

(*Formal parts: see No. 1630.*)

That it may be referred to one of the taxing officers of the Supreme Court to tax the bill of fees, charges and disbursements, amounting to the sum of \$ _____, delivered by the above named *A.B.*, of (*place of business*), to the applicant and paid by the applicant to the said *A.B.*, on or about the day of _____, 19____, (*or as may be*): with all usual directions.

1634

Notice of motion for the taxation of a paid bill.

2. That in case it shall appear upon such taxation that the said bill is overpaid, the said taxing officer may be directed to certify the amount overpaid; and that in such case the said *A.B.* may be ordered, within twenty-one days after service of the order to be made hereon, and of the said taxing officer's certificate to be made in pursuance thereof, to repay to the applicant what shall be certified to be the amount so overpaid by him.

3. That the said taxing officer may be at liberty to state any circumstances specially, at the request of either party, as he shall think fit.

4. That the costs of this application, and of the said reference, may be dealt with in such manner as the taxing officer shall think fit to direct. And take notice (*&c., as in No. 403*).

(*Formal parts: see No. 403.*)

on the part of the above named *A.B.*, that the time allowed to the applicant to deliver his bill of fees, charges and disbursements, pursuant to the order dated the _____ day of _____, 19____, may be enlarged until the _____ day of _____, 19____. And take notice that on such motion (*&c., as in No. 403*).

1635

Notice of motion for time to deliver bill of costs.

TARIFF A.

(Rule 1178.)

TABLE OF COSTS

IN THE

HIGH COURT OF JUSTICE, COURT OF APPEAL,
AND COUNTY COURTS.

TORONTO:
THE CARSWELL COMPANY,
LIMITED.

TARIFF A.

(Rule 1178.)

TABLE OF COSTS

IN THE

HIGH COURT OF JUSTICE, COURT OF APPEAL, AND COUNTY COURTS.

Neither the Taxing Officer nor a single Judge has any discretion to exceed the amount specified by the tariff where no power to increase is thereby given: *Re Totten*, 8 P. R. 386.

Where an action is dismissed with costs it means the costs of all defendants, and in all capacities in which they are defendants: *Woolley v. Coleman* W. N. 1886. 6, 36; 80 L. T. Jour. 320.

A defendant in person may be made an allowance for his time and trouble in arguing the case: *Millar v. Macdonald*, 14 P. R. 499.

Where an action is brought against a solicitor who defends it in person and obtains judgment, he is entitled upon taxation to the same costs as if he had employed a solicitor except in respect of items which the fact of his acting directly renders unnecessary: *London Scottish Benefit Society v. Chorley*, 12 Q. B. D. 452. Where he nominally appeared by a solicitor but did the work himself, the same costs were held to be taxable: *King v. Moyer*, 9 P. R. 514; and see *Banks v. Burroughs*, 12 S. C. R. 184.

As to the allowance of costs to a solicitor conducting several similar actions for different clients at the same time, see *Re Metropolitan, etc., Coal Co.*, 45 Ch. D. 666; *Baldwin v. Quinn*, 16 P. R. 248.

Costs incurred after the death of the client were disallowed, though the solicitor was not aware of the death: *Pool v. Pool*, 61 L. T. 401.

As to when defendants should appear by the same solicitor, or may appear by separate solicitors: see *Morgan & Wurtzburg on Costs*, p. 124; *Barrett v. Campbell*, 7 P. R. 150; *Connolly v. Hill* *Ib.*, 441; *Born v. Turner*, 1900, 2 Ch. 211, and *H. & L. Jud. Act* (3rd ed.), notes to *Rule 1162*.

In *Re Lyall*, 29 Sol. Jour. 290, trustees, viz., the widow of the testator, who was also tenant for life, and three others, were allowed two sets of costs, they having severed, on the ground that the rule was that a trustee, also a tenant for life, might appear separately from his co-trustees.

Defendants joining in a statement of defence may sometimes properly separate at the trial, and be represented by different counsel, where their cases are distinct: see *Ager v. Blackstock*, 56 L. T. 890; see also *Petrie v. Guelph, etc.*, 10 P. R. 600; *Logan v. Kirk*, 14 P. R. 130, and *Meriden, etc.*, v. *Braden*, 16 P. R. 346, 412.

Costs are taxable according to the tariff in force when the costs were incurred, notwithstanding its subsequent repeal: *Delap v. Charlebois*, 18 P. R. 417; see also *Earle v. Burland*, 8 O. L. R. 174.

General allowance for Plaintiffs and Defendants, as well between Solicitor and Client as between party and party (a).

	HIGH COURT AND COURT OF APPEAL.	COUNTY COURTS.
	\$ c.	\$ c.
1. Instructions to sue in undefended cases.....	3 00	2 00
2. In defended cases.....	4 00	3 00
3. Instructions to defend.....	4 00	3 00
4. Instructions for petition where no writ of summons issued.	2 00	1 00
WRITS.		
5. All writs, except writs of execution, subpœnas, and concurrent, and renewed writs.....	2 00	1 00
6. Concurrent writ.	1 50	0 75
7. Renewed writ (except writs of execution).....	1 50	0 75
8. All writs, except subpœnas, if over four folios, for every folio.	0 20	0 20

(a) In the case of costs payable by the opposite party and not by a client to his solicitor, there is no difference between costs "as between solicitor and client," and costs "between solicitor and client." Both mean costs between party and party, to be taxed as between solicitor and client, and include such costs as a solicitor can tax against a resisting client under a general retainer to prosecute or defend the action: *Heaslip v. Heaslip*, 14 P. R. 21, following *Cousineau v. City of London*, 12 P. R. 512.

As to "moderation" of costs, see *Beatty v. Haldane*, 4 C. L. T. 541.

The tariff applies in solicitor and client taxations, and under *Rule 1178*, no other fees are to be allowed in respect of the matters provided for by the tariff: see also *Re Harrison*, 80 L. T. Jour. 432; but the scope of the inquiry, and as to the powers of the officer to whom the reference is made, is different. That officer will exercise the discretion recognized by the tariff in increasing the amount chargeable for certain services, ordinarily exerciseable by the Taxing Officer at Toronto in party and party taxations: *Re Macaulay*, 17 P. R. 461; 18 P. R. 184.

The relation between town agent and country solicitor is that of solicitor and client: *Reid v. Burrows*, 1892, 2 Ch. 413; 40 W. R. 620. The usual "agency terms" entitle the agent to disbursements out of pocket, and half profit charges whether the country solicitor is paid by his client or not: *Ward v. Lawson*, 38 W. R. 300.

In an action on a covenant for indemnity against a mortgage, the plaintiff is not entitled to solicitor and client costs, but only to party and party costs of the action upon the covenant: *Hutton v. Wanzer*, 11 P. R. 302.

	HIGH COURT AND COURT OF APPEAL.	COUNTY COURTS.
	\$ c.	\$ c.
TABLE OF COSTS— <i>Continued.</i>		
9. Subpœna <i>ad testificandum</i>	1 00	0 50
10. Subpœna <i>duces tecum</i>	1 25	0 75
<p>Other means having been provided by statute for proving documents at the trial of actions, the costs of obtaining orders for subpœnas to public officers to produce documents, and of procuring the attendance of such officers at trials, should not be allowed except where it is clearly shewn that the documents could not be proved in any other way: <i>Hope v. Traders' Bank</i> 11 C.L.T. 55.</p> <p>Where a subpœna is issued under an order, <i>e.g.</i>, for the attendance of a public officer, or to a witness in the Prov. of Quebec, attendance to file the order is included in the attendance for the subpœna: <i>Carlisle v. Roblin</i>, 16 P. R. 328.</p>		
11. All subpœnas if over four folios, additional per folio.	0 15	0 15
12. Notice of writ for service in lieu of writ out of jurisdiction and copy.....	1 00	0 75
13. (Alias, and subsequent, writs, to be allowed as originals).....		
14. Special indorsement of writ of summons.....	1 00	0 75
15. Issuing any writ of execution.....	6 00	4 00
Renewal of any writ of execution.....	4 00	2 50
(In both cases, including placing same in the Sheriff's hands, all attendance, indorsements and letters in connection therewith.)		
See Rule 870.		
COPY AND SERVICE OF WRITS OF SUMMONS, AND OTHER PROCESS.		
16. For copy, including copy of notices required to be indorsed, each.	1 00	0 75
If over four folios, for every additional folio.....	0 10	0 10
<p>The Taxing Officer has no discretion to reduce the charge of \$1 where less than four folios: <i>Gage v. Canada Publishing Co.</i>, 19 C. L. J. 175; 3 C. L. T. 267.</p>		

	HIGH COURT AND COURT OF APPEAL.	COUNTY COURTS.
	\$ c.	\$ c.
TABLE OF COSTS— <i>Continued.</i>		
17. Service of each copy of writ, if not done by the Sheriff or an officer employed by him, when taxable to solicitor on Sheriff's default.....	1 00	0 50
It would seem that "writ" in this item includes a subpoena: <i>Carty v. London</i> , 13 P. R. 285; see also <i>Rule</i> 1172, and R. S. O. c. 17, s. 40.		
18. If served at a distance of over two miles from the nearest place of business, or office, of the solicitor serving same, for each mile beyond such two miles.....	0 13	0 10
19. For service of writ out of jurisdiction.....	Such allowance as the Taxing Officer shall think fit.	Such allowance as the Taxing Officer, or C. C. Judge shall think fit.
INSTRUCTIONS AFTER COMMENCEMENT OF ACTION.		
20. To counsel in special matters.....	1 00	0 50
21. To counsel in common matters.....	0 50	0 25
22. For special affidavits when allowed by the Taxing Officer (or County Court Clerk in C. C. cases)	1 00	0 50
23. For special affidavit on production when allowed by the Taxing Officer.....	2 00	1 00
24. For pleadings in action, and reasons for and against appeal.....	1 50	1 00
A fee for instruction for pleadings is allowed once only in the course of the action: <i>Torrance v. Torrance</i> , 9 P. R. 271; 2 C. L. T. 311.		
25. For counter-claim, when such claim could not prior to the Ont. Jud. Act, 1881, have formed the subject of a set-off.....	2 00	1 00
26. For reply to such counter-claims.....	2 00	1 00
27. To amend any pleading when the amendment is proper.....	2 00	1 00
28. For confession of defence under Rule 295.....	2 00	1 00
29. For special case in course of action.....	2 00	1 00

	HIGH COURT AND COURT OF APPEAL.	COUNTY COURTS.
	\$ c.	\$ c.
TABLE OF COSTS— <i>Continued.</i>		
30. For special case when no writ issued, or pleadings had, and no instructions to sue allowed.....	3 00	2 00
31. To add parties by order of Court or Judge.....	2 00	1 00
32. For brief.	2 00	0 50
Instructions for brief on an arbitration were allowed in <i>Re Oliver & Bay of Quinté Ry. Co.</i> , 7 O. L. R. 567.		
33. For adding parties in consequence of marriage, death, assignment, etc.....	1 00	0 50
34. For issue of fact, by consent, or Judge's order.....	2 00	1 00
35. To defend added parties after death of original party.	2 00	1 00
36. For confession of action in ejectment as to the whole, or in part.....	1 00	0 50
37. To strike or reduce special jury.....	2 00	1 00
38. For such other important step or proceeding in the suit as the Taxing Officer is satisfied warrants such a charge.....	2 00	1 00
Instructions for appeal, \$2.00 is proper: <i>Barber v. Morton</i> , 2 C. L. T. 340; also instructions to examine a plaintiff or a defendant, \$2.00: <i>Alexander v. School Trustees</i> , 11 P. R. 157.		

DRAWING PLEADINGS, ETC.

39. Statement of claim.....	2 00	1 00
40. If above ten folios, for every folio above ten, in addition.	0 20	0 15
41. Statement of defence, if five folios or under.....	2 00	1 00
42. Counter-claim if five folios or under.....	2 00	1 00
43. Statement of defence or counter-claim if above five folios.		
For every folio in addition.....	0 20	0 20
44. Reply and other pleadings for or on behalf of plaintiff or defendant.....	2 00	1 00
45. If above five folios, for each additional folio.....	0 20	0 15
46. Petition, per folio.....	0 20	0 15

	HIGH COURT AND COURT OF APPEAL.	COUNTY COURTS.
	\$ c.	\$ c.
TABLE OF COSTS— <i>Continued.</i>		
47. Issue for trial of facts by agreement or order, for every folio.	0 20	0 20
48. In special or contested actions or matters on the Higher Scale to be increased to such sum as the Taxing Officer in Toronto may think fit.		
49. Special case, per folio.	0 20	0 20
50. Drawing interrogatories, or answers, for any purposes required by law, per folio.	0 20	0 20
51. Drawing reasons for or against appeal, five folios or under.	2 00	1 00
For each folio above five.	0 20	0 15
52. (The above charges do not include engrossing, or copies to file or serve.)		
53. Taking cognovit and entering judgment thereon, when there has been no previous proceeding, and the true debt does not exceed \$200.	8 00	8 00
54. For same services when the true debt exceeds \$200.	12 00	10 00
55. Drawing and engrossing cognovit, and attending execution, when there have been previous proceedings.	2 00	1 00
56. Preparing bond to secure costs, bond on any appeal to secure costs or damages, or any recognizance (to include drawing affidavits and all attendances in connection with the preparation thereof).	5 00	3 00
COPIES.		
57. Of pleadings, brief and other documents, when no other provision is made, and copies properly allowable.	0 10	0 10
As to copies of documents provided for the use of the Judge, see <i>Re Houston</i> , 1903, W. N. 187; 89 L. T. 469.		
As to costs of translation of necessary documents, see <i>Earl of Strathmore v. Vane</i> , 1900, 2 Ch. 251.		
58. Certified copy of pleadings, or issue, for use of Judge.	1 50	0 75
See Item 114.		

	HIGH COURT AND COURT OF APPEAL.	COUNTY COURTS.
	\$ c.	\$ c.
TABLE OF COSTS—Continued.		
59. For every folio above 15, per folio.....	0 10	0 10
60. Of special and common orders, per folio.....	0 10	0 10
61. Of depositions properly taken for use on a motion in Court or Chambers—in the discretion of the Taxing Officer not exceeding the amount payable to a Special Examiner for copies.....		
This item was added in consequence of, and to meet the case of <i>Rennie v. Block</i> , 17 P. R. 317.		
Where evidence is required for the purposes of an appeal and cross appeal, both of which are dismissed with costs, the copy of evidence is not taxable to either party: <i>Denison v. Woods</i> , 18 P. R. 328.		
NOTICES, INCLUDING ONE COPY.		
62. Notice, in action for recovery of land, to defend for part of premises; not to be allowed when defence limited by appearance.....	1 00	0 50
63. Notice of plaintiff's or defendant's title in action for recovery of land.....	1 00	0 50
64. Notice of admission of right and denial of ouster by joint tenant.....	1 00	.....
65. Notice of confession of action in action for recov- ery of land as to whole or part.....	0 50	.....
66. Notice in lieu of statement of claim.....	0 50	0 25
67. Notice to produce and admit, each.....	0 50	0 25
68. Notice by defendant to third party under Rule 209 (not to include copy of statement of claim)..	1 00	0 50
69. In any case where any of the above exceed two folios, for every additional folio.....	0 20	0 20
For every additional folio of copy.....	0 10	.....
For every additional copy per folio.....	0 10	.....
70. Particulars of claim, demand, set-off, or counter- claim, five folios or under.....	2 00	0 75
If exceeding five folios, per folio in addition.....	0 20	0 15
71. Notice of motion in Court or Chambers, drawing and copy to serve, per folio.....	0 30	0 15

	HIGH COURT AND COURT OF APPEAL.	COUNTY COURTS.
	\$ c.	\$ c.
TABLE OF COSTS— <i>Continued.</i>		
72. Notice of appearance when entered after time limited by writ, and notice given forthwith, but not otherwise.....	0 50	0 25
73. Notice of entry of appearance in action for recovery of land by person not named in the writ.....	0 50	0 25
74. Notice to Sheriff to discharge prisoner out of custody.....	0 50	0 40
75. Notice of discontinuance.....	0 50	0 25
76. Notice of disputing amount of claim.....	0 50	0 25
77. Notice of trial or assessment.....	0 50	0 25
78. Demand of residence of plaintiff.....	0 50	0 25
79. Demand of names of partners.....	0 50	0 25
80. Notice of setting down on motion for judgment or on further directions.....	0 50	0 25
81. Notice of taxation or appointment to tax.....	0 50	0 25
82. Notice of filing affidavits when required (only one notice to be allowed for a set of affidavits filed or which ought to be filed together).....	0 50	0 25
83. All common notices, demands or appointments, not specified.....	0 50	0 25
84. Every additional copy, per folio.....	0 10	0 10
85. (In no case less than fifty cents to be taxed for notice, demand or appointment, and one copy.) (Where necessary to be served and served on more than one party the extra services to be allowed.)		
PERUSALS.		
86. Of each of the pleadings as defined by The Judicature Act, 1895, including reasons for and against appeal.....	1 00	0 50
87. Of special case by the solicitor of any party, except the one by whom it is prepared, when the case is submitted in the course of the cause.....	2 00	1 00

	HIGH COURT AND COURT OF APPEAL.	COUNTY COURTS.
	\$ c.	\$ c.
TABLE OF COSTS— <i>Continued.</i>		
88. And in special, or contested actions, or matters, or of interrogatories, and cross-interrogatories on commission.....	(Such sum as the Taxing Officer in Toronto thinks fit)	0 50
89. Of affidavits and exhibits of a party adverse in interest, filed or produced on any application, where perusal is necessary, if 20 folios or under.	1 00	0 50
On the Higher Scale per folio over 20 folios.....	0 05	.....
(Not in any case to exceed the sum of \$5.)		
An allowance for the perusal of exhibits was made in <i>Re De Rosay, Rymer v. De Rosay</i> , 53 L. J. Chy. 448.		
ATTENDANCES.		
90. Necessary attendances consequent on the service of a notice to produce or admit, or an inspection of documents when produced under order including making admission, altogether.....	1 00	0 50
To be increased by Taxing Officer (or County Court Clerk) in cases of special, difficult and important nature, to.....	2 00	1 00
91. Attending on return of motion, in Chambers.....	1 00	0 50
To be increased in the discretion of the Taxing Officer, or in C. C. cases of the Judge, to.....	2 00	1 50
A counsel fee on an <i>ex parte</i> motion in Chambers should not be taxed: <i>Carlisle v. Roblin</i> , 16 P. R. 328.		
92. On consultation, or conference, with counsel, in special, difficult, and important matters, in the discretion of the Taxing Officer in Toronto (or in C. C. cases of the County Court Clerk), to.....	2 00	1 00
To be increased in the discretion of the Taxing Officer, as between solicitor and client, to such sum as he shall see fit, or in C. C. cases in the discretion of the C. C. Judge to, not exceeding		3 00

	HIGH COURT AND COURT OF APPEAL	COUNTY COURTS
	\$ c.	\$ c.
TABLE OF COSTS— <i>Continued.</i>		
No special attendance to be allowed to a solicitor on proceedings on which he also appears as counsel.		
93. Solicitor attending Court on trial of cause, when not himself counsel, or partner of counsel. . . .	2 00	1 00
See <i>The Scto.</i> 69 L. T. 231; <i>Re Dixon</i> , 79 L. T. 163; 46 W. R. 677.		
And in special, difficult, and important cases, each hour necessarily present at trial.	2 00	1 00
In no case to exceed, per day.	10 00	5 00
(Provided the attendance of such solicitor, and the length of time of such attendance, be duly entered at the time in the book of the Registrar, Deputy-Registrar, Deputy-Clerk of the Crown, Clerk of Assize, C. C. Clerk, or other officer of the Court present at the time, or proved by affidavit.)		
94. To hear judgment when not given on close of argument.	2 00	1 00
This is properly taxable for attending to read a written judgment handed out by the Judge to the Registrar and not delivered in open Court: <i>Gage v. Canada Publishing Co.</i> , 19 C. L. J. 175; 3 C. L. T. 267.		
95. To hear judgment when cause on list for judgment, but judgment not given.	2 00	1 00
96. On taxation of costs.		1 00
97. On taxation of costs, per hour.	1 00	
98. On revision, per hour, when attendance required by Taxing Officer or revision had on order. . .	1 00	0 50
99. On revision by County Court Judge on appeal. . .		0 50
100. To obtain or give undertaking to appear, when service accepted by a solicitor.	1 00	0 50
101. Attendance to file, or serve.	0 50	0 25
102. Attendance on warrant, or appointment, of Master, Registrar, Examiner, Referee, or County Court Clerk, per hour.	1 00	0 50

	HIGH COURT AND COURT OF APPEAL.	COUNTY COURTS.
	\$ c.	\$ c.
TABLE OF COSTS— <i>Continued.</i>		
To be increased in the discretion of the Taxing Officer in Toronto, or in C. C. cases, of the C. C. Judge, to not exceeding per hour.....	2 00	1 00
103. Attendance on Master, or Registrar (or County Court Clerk), in special matters, per hour...	1 00	0 50
104. Attending to search bond.....	0 50	0 25
105. Attending to search and perusing bond.....	1 00	0 50
106. Every other necessary attendance.....	0 50	0 25
Only one attendance is taxable for a <i>præcipe</i> order: <i>Latour v. Smith</i> , 13 P. R. 214.		
An attendance to search affidavit on production is not taxable between party and party: <i>Carlisle v. Roblin</i> , 16 P. R. 328.		
Attending to bespeak and for Registrar's abstract, is not taxable: <i>Ib.</i>		
107. On important points and matters, requiring the attendance of counsel, and when counsel attends, before a Master, Examiner, Referee, Registrar, Inspector of Titles, or County Clerk, a counsel fee may be allowed by a Taxing Officer in Toronto (or the Judge in County Court cases), in lieu of fees for attendance, such counsel fee in County Court cases not to exceed \$5.		
An allowance under this item should be exceptional, and made only when matters of special importance or difficulty are involved at some particular sitting. Where unreasonable time was occupied over a small matter the allowance of a counsel fee was held to be improper, and the minimum charge under item 102 was held to be proper both for taking of evidence and argument: <i>Re Robinson</i> , 16 P. R. 423. A counsel fee, and a fee for advising, on evidence on an appeal and cross appeal from a Referee's report were allowed in an action by an architect for professional services, involving questions other than mere accounts: <i>Denison v. Woods</i> , 18 P. R. 328.		
BRIEFS.		
108. For drawing briefs, five folios or under.....	2 00	1 00
No brief is taxable on a Chamber motion: <i>Rennie v. Block</i> , 17 P. R. 317.		

	HIGH COURT AND COURT OF APPEAL.	COUNTY COURTS.
	\$ c.	\$ c.
TABLE OF COSTS— <i>Continued.</i>		
Instructions for brief should be allowed where a brief itself is taxed: <i>McCallum v. McCallum</i> , 11 P. R. 179.		
The allowance of copies of correspondence for brief, and for use at the trial, a great part of which is read at the trial, is in the discretion of the Taxing Officer: <i>Budgett v. Budgett</i> , 43 W. R. 167; but in exercising his discretion he ought to ascertain what part was necessary to be supplied to counsel for the proper argument and decision of the case: S. C., 1895, 1 Ch. 202.		
On an appeal from a Master's report, a copy of the evidence before the Master is not necessarily to be obtained, and may not be allowed as part of the brief, even between solicitor and client, if amounting to a considerable sum, without the authority of the client being obtained, where the original depositions are available and the counsel on the appeal is the same who attended before the Master: <i>Re Robinson</i> , 16 P. R. 423.		
Where the evidence of witnesses who are not called is briefed, it should not be allowed in the brief if fees paid to such witnesses are not allowed: <i>Carlisle v. Roblin</i> , 16 P. R. 328.		
109. For drawing briefs, for each folio above five.....	0 10	0 10
110. For drawing brief, per folio, for original and necessary matter.....	0 20	0 20
111. Copy of documents, other than pleadings, per folio.....	0 10	0 10
112. Copy of brief for second counsel, when fee taxed to him, per folio.....	0 10	.....
Charges for obtaining copies of shorthand writer's notes of evidence for use of counsel at the argument of the case, where the argument is unavoidably postponed for a considerable time after the examination of the witnesses or the greater portion of the witnesses, are taxable: <i>Gage v. Canada Publishing Co.</i> , 19 C.L.J. 175; 3 C. L. T. 267.		
As to when the costs of plans and surveys are allowed, see <i>McGannon v. Clarke</i> , 9 P. R. 555; of depositions of witnesses examined <i>de bene esse</i> , <i>McMillan v. McMillan</i> , 8 C. L. J. 285; and of depositions of witnesses examined under a commission, see note to <i>Rule 1175</i> .		

	HIGH COURT AND COURT OF APPEAL.	COUNTY COURTS.
TABLE OF COSTS— <i>Continued.</i>	\$ c.	\$ c.
COURT FEES.		
113. Fees after statement of claim, or, where statement dispensed with, after filing writ, on defence, joinder of issue, trial, or argument before Courts or any other step in the cause, and on judgments, other than præcipe judgments in mortgage cases. No two fees to be allowed to either party when such proceedings are taken, or had, between the first day of any sittings of the Courts (as formerly fixed by Rule 216 of the Con. Rules of 1888, or fixed by R. S. O. 1887, c. 47, s. 12, as the case may be), and the first day of the following sittings so fixed.	1 00	0 50
114. Fee on certified copy of pleadings for Judge.... See Item 58.	1 00	0 50
115. Fee on every order, or judgment to the party obtaining the same..... This fee is taxable on a præcipe order: <i>Gage v. Canada Publishing Co.</i> 19 C. L. J. 175; 3 C. L. T. 267.	1 00	0 50
116. Fee on præcipe judgment in mortgage cases.....	4 00	2 00
AFFIDAVITS.		
117. Drawing affidavits, per folio..... Costs of affidavits used on a motion are taxable though, by mistake, filed in the wrong office: <i>Sturgeon Falls E. L. Co. v. Sturgeon Falls</i> , 19 P. R. 286. Costs of affidavits prepared in answer to a motion dismissed on a preliminary objection with costs, are in the discretion of the taxing officer: <i>Whitewood v. Whitewood</i> , 19 P. R. 183. Costs of affidavits prepared in answer to a motion for injunction pending a stay of proceedings, were allowed where the action was dismissed with costs for non-compliance with an order for security for costs: <i>Whitely Exerciser v. Gamage</i> , 1888, 2 Ch. 405.	0 20	0 20

	HIGH COURT AND COURT OF APPEAL.	COUNTY COURTS.
	\$ c	\$ c.
TABLE OF COSTS— <i>Continued.</i>		
118. Engrossing same to have sworn, per folio.....	0 10	0 10
119. Copies of affidavits, per folio, when necessary....	0 10	0 10
120. Common affidavits of service, including service by post when necessary, or of payment of mileage and of non-appearance, including copy, oath, and attendance to swear.....	1 00	0 75
121. The solicitor for preparing each exhibit.....	0 10	0 10
DEFENDANTS.		
122. Appearance, including attending to enter.....	1 00	0 50
For each additional defendant.....	0 20	0 10
123. For limiting defence in action for recovery of land in appearance, besides above allowance for appearance; not to be allowed when notice of limiting defence served.....	1 00	0 50
JUDGMENTS OR ORDERS.		
124. Drawing minutes of judgment, or order, per folio, when prepared by solicitor, under direction of officer settling the same (or, in C. C. cases, of the C. C. Judge).....	0 20	0 20
Engrossing an <i>ex parte</i> order is not taxable; it is in- cluded in the charge for drawing order: <i>Carlisle v.</i> <i>Roblin</i> , 16 P. R. 328.		
125. Judgment for non-appearance on specially in- dorsed writs, and in action for recovery of land.	1 00	0 50
126. For every hour's attendance before proper officer on settling or passing minutes.....	1 00	0 50
To be increased in the discretion of the officer in special and difficult cases, when the solicitor attends personally, to a sum not exceeding altogether.	5 00	2 50

	HIGH COURT AND COURT OF APPEAL.	COUNTY COURTS.
	\$ c.	\$ c.
TABLE OF COSTS— <i>Continued.</i>		
LETTERS.		
127. Letter to each defendant before suit, only one letter to be allowed to any defendants who are in partnership, and when subject of suit relates to the transactions of their partnership.	0 50	0 25
128. Common letters, including necessary agency letters.	0 50	0 25
Necessary letters between a solicitor and his agent on the business of the cause are taxable as between party and party, whether the agent resides in the county town of the county in which the solicitor resides, or in another county, or in Toronto: <i>Agnew v. Plunkett</i> , 9 P. R. 456.		
Where R. and A. were practising at Cobourg, and R. and N. at Brighton, R. being a member of both firms, letters passing between these firms were allowed where agency letters would be proper: <i>Yott v. Hubbs</i> , 11 C. L. T. 358.		
Necessary letters and attendances incurred in obtaining the decision of the Taxing Officer in Toronto relating to charges upon which a decision by him is required, in regard to increasing fees, etc., are taxable under item 160.		
129. With power to the Taxing Officer (or in C. C. cases the C. C. Clerk), as between solicitor and client, to increase the fee for special and important letters to an amount not exceeding	2 00	1 00
130. Postages—the amount actually disbursed.		
131. For correspondence during the progress of an appeal to the Court of Appeal a reasonable sum in the discretion of the Taxing Officer may be allowed, not exceeding.	5 00	2 00
SALES BY MASTER, OR AUCTIONEER; OR REAL REPRESENTATIVE IN PARTITION SUITS.		
132. Drawing advertisements for the sale of real or personal estate under the direction of the Court, including all copies, except for printing.	2 00	1 00

	HIGH COURT AND COURT OF APPEAL.	COUNTY COURTS.
TABLE OF COSTS— <i>Continued.</i>	\$ c.	\$ c.
And for each folio over five, per folio.....	0 20	0 15
(To be increased in the discretion of the Master (or in C. C. cases the C. C. Judge) to a sum not exceeding ten dollars, when special infor- mation has been procured for the purpose of sale.)		
133. Copies for printing, per folio.....	0 10	0 10
134. Each necessary attendance on printer.....	0 50	0 25
135. Attending and making arrangements with auc- tioneer.	1 00	0 50
136. Revising proof.	1 00	0 50
137. Fee on conducting sale when held where solicitor resides.	5 00	3 00
138. If solicitor is engaged for more than three hours, for every hour beyond that time.....	1 00	0 75
139. Fee on conducting the sale elsewhere, besides all necessary travelling and hotel expenses, when solicitor attends with the approval of the Master (or Real Representative) previously given.	10 00	5 00
If the sale occupies more than one day, the Master may allow him, in addition to his travelling expenses, <i>per diem</i> , a sum not exceeding twenty dollars.		
The Master may also allow to one other party to the suit his fees and expenses for attending sales, if, in his opinion, it is necessary and proper that he should attend.		
MISCELLANEOUS.		
140. Statement of issues in Master's office, when re- quired by the Master.....	2 00	1 00
In special matters to be increased in the discretion of the Taxing Officer in Toronto.		
141. For each folio over 10.....	0 20	0 20

	HIGH COURT AND COURT OF APPEAL.	COUNTY COURTS.
TABLE OF COSTS— <i>Continued.</i>	\$ c.	\$ c.
142. When it has been satisfactorily proved that proceedings have been taken by solicitors out of Court to expedite proceedings, save costs, or compromise actions, an allowance is to be made therefor in the discretion of the Taxing Officer in Toronto (or Judge of County Court in C. C. cases.) Charges for proceedings taken to save expenses are taxable whether taken between the solicitors for the parties or by one party: <i>Torrance v. Torrance</i> , 9 P. R. 271. See item 160.		
143. Drawing bill of costs as between party and party for taxation (including engrossing and copy for Taxing Officer, or C. C. Clerk), per folio.. The costs of drawing bills of costs are allowed where there is litigation or <i>quasi</i> litigation, but are never allowed in the matter of a taxation of a solicitor's bill by his client: <i>Re National Bank of Wales</i> , 1902, 2 Ch. 412.	0 30	0 20
144. Copy, per folio, to serve.....	0 10	0 10
145. For maps and plans necessary for and used at the trial—a reasonable sum in the discretion of the Taxing Officer (Con. Rule 1213)..... See Rule 1174, and notes. See also items 160 and 166.		

COUNSEL FEES.

Counsel fees cannot be taxed to a barrister acting in his own behalf: *Clarke v. Creighton*, 15 P. R. 105, unless he also acts for other parties entitled to costs: *Strachan v. Ruttan*, *Ib.*, 109.

Notwithstanding the provisions of the Tariff a Taxing Officer has a discretion to tax larger counsel fees as "between solicitor and client" than may have been allowed on a taxation "between solicitor and client": *Smith v. Harwood*, 17 P. R. 36, and the discretion of a Taxing Officer as to the amount of counsel fees will not ordinarily be interfered with on appeal: *Ib.*

	HIGH COURT AND COURT OF APPEAL.	COUNTY COURTS.
	\$ c.	\$ c.
TABLE OF COSTS— <i>Continued.</i>		
Where an appeal was dismissed without calling on counsel for the respondent, a fee was taxed for the leading counsel of the respondent who was retained but not actually present when the appeal was disposed of: <i>Charman v. Brandon</i> , 82 L. T. 369.		
146. Fee on motion of course, or on motion in matters not special.	2 00	1 00
147. On special <i>ex parte</i> motion or application to the Court (only one counsel fee to be taxed)	5 00	2 00
A counsel fee of \$5.00 should be taxed on each necessary and proper enlargement of the Court motion: <i>McCallum v. McCallum</i> , 11 P. R. 179.		
To be increased in the discretion of the Taxing Officer in Toronto (or Judge of County Court in C. C. cases, who shall mark amount to be taxed on order of Court, if any, before taxation) to.		
	10 00	5 00
148. Fee on argument on supporting or opposing application to the Court, or argument in the High Court of special case, or appeal.	10 00	5 00
In High Court and Court of Appeal to be increased in the discretion of the Taxing Officer in Toronto, but no more than two counsel fees to be allowed in any case.		
In C. C. to be increased in the discretion of the Judge, to.		
	.....	10 00
See items 160 and 166.		
149. On argument of appeal in the Court of Appeal, in the discretion of Taxing Officer at Toronto, but no more than two counsel fees to be allowed in any case. (Rules 1 Jan., 1896, 1504, amended.)		
See <i>Delap v. Charlebois</i> , 18 P. R. 417.		
150. On argument in County Court appeals, in the discretion of the Taxing Officer at Toronto, not exceeding \$25. (Rules 1 Jan., 1896, 1504.)		

	HIGH COURT AND COURT OF APPEAL.	COUNTY COURTS.
	\$ c.	\$ c.
TABLE OF COSTS— <i>Continued.</i>		
151. On consultations.	5 00	2 00
See <i>Rule 1177.</i>		
See <i>Commissioners of Railways v. O'Rourke</i> , 75 L. T. 84.		
152. Fee, with brief, on assessment.	10 00	6 00
153. Fee, with brief, at trial.	10 00	10 00
In High Court cases to be increased by the Taxing Officer in his discretion to a sum not exceeding \$40 to a senior counsel, and \$20 to junior counsel, in actions of a special and important nature. Provided that the Taxing Officer in Toronto shall have power to tax increased fees, but more than one counsel fee shall not be allowed in any case not of a special and important nature; not more than two in any case. Provided that if an application to increase fees be made in the first instance to the Local Taxing Officer, and a <i>fiat</i> granted, no application shall thereafter be made to the Taxing Officer at Toronto.		
As to the allowance of two counsel to a trustee who being attacked appeared separately from his co-trustees, see <i>Re Maddock, Butt v. Wright</i> , 1899, 2 Ch. 588.		
In County Court cases to be increased by the Judge in actions of a special or important nature falling within the increased jurisdiction conferred by 59 V. c. 19, upon County Courts (on notice to the opposite party) to a sum not exceeding. . . . .	.....	50 00
In County Court cases to be increased by the Judge, in actions of a special or important nature not falling within the increased jurisdiction aforesaid (on notice to the opposite party) to a sum not exceeding. . . . .	.....	25 00
(In C. C. cases no charge to be made by either party in connection with such application.)		
See items 160 and 166.		

	HIGH COURT AND COURT OF APPEAL	COUNTY COURTS.
	\$ c.	\$ c.
TABLE OF COSTS— <i>Continued.</i>		
Where an action of a special and important nature is strenuously contested on both sides it is proper to allow fees to both senior and junior counsel: <i>Carlisle v. Roblin</i> , 16 P. R. 328.		
Counsel fees were taxed to a partner of defendant upon proof of an agreement that the partner was to be paid in the same way as if other counsel were employed: <i>Johnston v. Ryckman</i> , 7 O. L. R. 511.		
The discretion of the Taxing Officer as to allowing two counsel fees, and of the Taxing Officer at Toronto or the Judge in C. C. cases as to increased fees, only arises where the action is of a special or important nature: <i>Re Robinson</i> , 16 P. R. 423.		
The practice is not to interfere on appeal with the discretion of a Taxing Officer as to the quantum of a counsel fee: <i>Rondot v. The Monetary Times</i> , 18 P. R. 141; and see notes to Rule 774; <i>Denison v. Woods</i> , 18 P. R. 328.		
This item is to be read as part of item 163 relating to arbitrations: <i>McKeen v. South Gower</i> , 12 P. R. 553.		
In arbitrations in England there is no general rule that only one counsel fee should be allowed: <i>Orient Steam Navigation Co. v. Ocean Marine Insurance Co.</i> , 35 W. R. 771. See note to item 164.		
Under an order made at the Assizes postponing the trial upon payment of the costs of the day, counsel fees are taxable according to the discretion of the Taxing Officer and not according to any arbitrary limit: <i>Outwater v. Mullett</i> , 13 P. R. 509, in which <i>Hogg v. Crabb</i> , 12 P. R. 14, was dissented from.		
The midday adjournment of the Court was held not to be included in computing the time occupied by a case: <i>Collins v. Worley</i> , 60 L. T. 748.		
Where by the resignation of a Judge a second argument was rendered necessary, the Court allowed the successful party the costs of both arguments: <i>Platt v. Attrill</i> , 19 C. L. J. 348; 3 C. L. T. 543.		
154. On argument or examination in Chambers in cases proper for the attendance of counsel and where counsel attends.....	2 00	1 00
To be increased in the discretion of the Taxing Officer in cases in the High Court or Court of Appeal to a sum not exceeding.....	5 00	.....

	HIGH COURT AND COURT OF APPEAL.	COUNTY COURT.
	\$ c.	\$ c.
TABLE OF COSTS— <i>Continued.</i>		
To be increased in the discretion of the Judge in C. C. cases to a sum not exceeding.....	.....	5 00
Subject to further increase in the discretion of the Taxing Officer at Toronto. Provided that the Master in Chambers may in cases before him recommend a fee.		
This item would appear to apply in taxations between solicitor and client as well as between party and party: see <i>Re Chapman</i> , 9 Q. B. D. 254; 10 Q. B. D. 54; but see item 166, <i>Rule 3</i> , and <i>Re Macaulay</i> , 17 P. R. 461; 18 P. R. 184.		
A fee paid to counsel in British Columbia for attending on an examination of witnesses there was allowed in <i>Logan v. Kirk</i> , 14 P. R. 130.		
155. On attendance on reference to Master, C. C. Clerk, or Referee, when counsel necessary...	5 00	3 00
To be increased in special and important matters requiring the attendance of counsel, in the discretion of the Taxing Officer in Toronto (or the County Court Clerk in C. C. cases, not exceeding).....		
See items 160 and 166.	.....	10 00
156. Fee on drawing, and settling, allegations in præcipe for revivor, in special cases, proper for opinion of counsel.....	2 00	1 00
To be increased in the discretion of Taxing Officer (or C. C. Clerk in C. C. cases), to an amount not exceeding.....		
	5 00	2 00
157. On settling pleadings, interrogatories, special cases, issues or petitions, and advising on evidence in contested cases, in the discretion of the Taxing Officer (or C. C. Clerk in C. C. cases), not exceeding.....	5 00	3 00
See items 160 and 166.		
One fee for advising on evidence would seem, under this item, all that can be taxed in an action. In England a second fee may be allowed where, after the pleadings are closed, and advice on the evidence obtained, the opposite party has by motion obtained a change of pleadings: <i>Wicksteed v. Biggs</i> , 52 L. T. 428.		

	HIGH COURT AND COURT OF APPEAL.	COUNTY COURTS.
	\$ c.	\$ c.
TABLE OF COSTS— <i>Continued.</i>		
A fee revising a special reply to a counter-claim is proper: <i>Alexander v. School Trustees</i> , 11 P. R. 157.		
Where there was no trial, a reference having been arranged for beforehand by the parties, and being necessary in the case, no fee for advising on evidence was allowed: <i>Re Robinson</i> , 16 P. R. 423.		
A counsel fee and a fee for advising on evidence on a trial before a Referee of issues other than mere questions of account, were allowed in an action by an architect for professional services: <i>Denison v. Woods</i> , 18 P. R. 328.		
158. On settling the appeal case and reasons for or against appeal.	5 00	2 00
To be increased in the discretion of the Taxing Officer at Toronto in special and important matters to a sum not exceeding.	20 00	5 00
See Items 160 and 166.		
GENERAL.		
159. Where any fee is subject to be increased, in the discretion of the Taxing Officer in Toronto, either party to the taxation may, during its progress, require that such item shall be referred by the Local Taxing Officer to the Taxing Officer in Toronto, whose decision shall be final as to that item, but this shall not prevent an appeal from such taxation.		
See item 160.		
160. The necessary letters and attendances incurred in obtaining the decision of the Taxing Officer in Toronto in any matters which are in his discretion shall be allowed as part of the costs of the cause.		
An affidavit in proof of an agreement as to payment of counsel fees for the partner of a defendant was not taxed in <i>Johnston v. Ryckman</i> 7 O. L. R. 511.		
161. The Taxing Officer in Toronto may apply to a Judge, or the Courts, on the taxation of any item which is in his discretion, or is referred to him.		

	HIGH COURT AND COURT OF APPEAL.	COUNTY COURTS.
TABLE OF COSTS— <i>Continued.</i>	\$ c.	\$ c.
162. No application shall be allowed by either solicitor, or counsel, to a Judge, or the Court, in reference to any item which is in the discretion of the Taxing Officer in Toronto, but this shall not prevent an appeal from a Taxing Officer.		
163. On arbitrations, counsel fees may be allowed and taxed on the same scale and conditions, so far as possible, as those hereinbefore prescribed for counsel fees at trials.		
<p>Item 153 is to be read as part of this item, and the Taxing Officers at Toronto have authority to consider the question of increased counsel fees in the case of an arbitration, where there is no cause in Court: <i>Re McKeen & South Gower</i>, 12 P. R. 553.</p>		
<p>As to the discretion of the Taxing Officer in regard to fees and expenses of arbitrators, and in regard to the fees of counsel on arbitrations, see <i>Re Hillyard & Royal Ins. Co.</i>, 12 P. R. 255.</p>		
<p>The Taxing Officer may in his discretion allow two counsel fees, as he may in the case of a trial of an action: <i>Re Pollock</i>, 15 P. R. 355.</p>		
<p>In arbitrations in England there is no general rule that only one counsel fee should be charged: <i>Orient Steam Nav. Co. v. Ocean Marine Ins. Co.</i>, 35 W. R. 771.</p>		
<p>Instructions for brief on an arbitration were allowed in <i>Re Oliver & Bay of Quinté Ry. Co.</i>, 7 O. L. R. 567.</p>		
<p>In taxing the costs of an arbitration upon the County Court scale, no larger fee for attendance of counsel before the arbitrators than \$25 can be allowed, even though the attendance is for several days: see item 153.</p>		
<p>Arbitrators are not under R. S. O. c. 62, entitled to charge as fees for a day's sitting, which extends beyond six hours, more than the maximum amount fixed by the schedules for a single day's sitting: <i>Re Thornbury & Grey</i>, 15 P. R. 193.</p>		
164. On appeals to the Court of Appeal and in County Court appeals where the fees are not above provided for, the same fees and allowances shall be taxed as are allowed for similar services in the High Court or County Court, as the case may be.		

	HIGH COURT AND COURT OF APPEAL	COUNTY COURTS.
	\$ c.	\$ c.
TABLE OF COSTS— <i>Continued.</i>		
165. In taxing costs between solicitor and client, the Taxing Officer or County Court Clerk, in County Court cases, may allow for services rendered not provided for by this tariff, a reasonable compensation as far as practicable analogous to its provisions.		
166. Where a taxation is between solicitor and client on a reference made under the Act respecting Solicitors (R. S. O. 1887, c. 147) (a) and Rules 1184 to 1188, the officer to whom the matter is referred may exercise all the powers of the Taxing Officer at Toronto in respect to increasing allowances made by this tariff..		
(a) Now R. S. O. c. 174.		
This item is in confirmation of the decision in <i>Re Macaulay</i> , 17 P. R. 461; 18 P. R. 184.		
Though a Taxing Officer has a discretion in the taxation of costs as between party and party, and the same discretion as between solicitor and client, still it by no means follows that what is reasonable in the former case is also reasonable in the latter: <i>Re Blyth & Fanshawe</i> , 52 L.J. Chy. 186; <i>Smith v. Harwood</i> , 17 P.R. 36.		
A fee of \$20 a day was allowed to a solicitor attending upon the execution of a commission: <i>Greevy v. Smith</i> , 7 C. L. T. 168.		
Before incurring any unusual expense, the solicitor should inform his client that it is unusual, and obtain his sanction, letting him know that the expense may not be allowed between party and party: <i>Re Broad v. Broad</i> , 15 Q.B.D. 252, 420; but see <i>Osmond v. Mutual Cycle Co.</i> , 1899, 2 Q. B. 488; 81 L. T. 254. See also <i>Rule 1176</i> . A trustee was allowed costs out of the estate, of a petition to correct slips in a former petition: <i>In re Hopper's Trusts</i> , 34 W. R. 392. A solicitor was disallowed between solicitor and client costs occasioned by an inaccurate statement in particulars of sale, by reason of which the Court of Appeal held a purchaser not bound to complete his purchase: <i>Re X.</i> , 81 L. T. Jour. 6. The costs of journeys to London by a country solicitor were, under special circumstances, allowed: <i>In re Storer</i> , 32 W. R. 767.		

TARIFF B.

TARIFF OF DISBURSEMENTS.

(Rule 1179.)

Except where otherwise expressly provided by Statute or Rule of Court, the following fees and allowances shall be taken and received by the officers and persons herein mentioned in civil actions in the High Court and Court of Appeal and in the County Courts in lieu of all fees payable to those officers and persons under the tariffs heretofore in force in the said Courts :

	HIGHER SCALE. HIGH COURT AND COURT OF APPEAL.	COUNTY COURTS.
	\$ c	\$ c.
FEES TO BE PAYABLE IN STAMPS OR OTHERWISE TO OFFICERS OF THE COURTS.		
<i>(Inclusive of all Fees expressly imposed by Statute.)</i>		
REGISTRAR OF COURT OF APPEAL.		
1. Setting down for argument (a).....	4 00	.....
2. On every judgment or order of the Court passed and entered (a).....	2 00	.....
3. Certificate on discharging appeal.....	0 90	.....
4. On every order in Chambers.....	0 50	.....
5. For other services the like charges as are payable in the High Court for similar services.....		

(a) Imposed by 58 V. c. 12, s. 184 (Jud. Act, s. 184).

	HIGHER SCALE. HIGH COURT AND COURT OF APPEAL.	COUNTY COURTS.
	\$ c.	\$ c.
FEES TO BE PAYABLE IN STAMPS, ETC.— <i>Con.</i>		
MASTER IN ORDINARY, LOCAL MASTERS AND OFFICIAL AND SPECIAL REFEREES.		
6. Filing and entering judgment or order in Master's book.	0 20	0 10
7. Every warrant or appointment.	0 50	0 10
8. Administering oath or taking affirmation.	0 20	0 20
9. Marking every exhibit.	0 20	0 10
10. Drawing depositions (in infancy matters only), reports or orders, per folio, to include time occupied.	0 20	0 20
11. Fair copy, per folio (when necessary).	0 10	0 10
12. Copies of evidence supplied to parties or for the use of the Judges—such sums as may be authorized under any Order in Council.		
13. Copies of evidence not provided for by any such Order in Council, and copies of papers given out when required, per folio.	0 10	0 10
14. Every attendance upon any proceeding or enlarge- ment thereof or selling property.	1 50	0 50
15. For each additional hour.	1 50	0 50
16. Fee on report signed (only one to be allowed in each action or matter, on first report).	2 00	<i>Nil.</i>
17. Every certificate, if not longer than two folios. . . .	0 50	0 20
18. For each folio over two.	0 20	<i>Nil.</i>
19. Filing each paper or subsequent order.	0 10	0 10
20. Taxing costs, per hour.	1 00	.....
21. Taxing costs, including attendance. . . . .	.....	0 80
22. Making up and forwarding depositions, bills of costs and proceedings in Master's office.	0 50	0 10
23. Every special attendance out of office within two miles, per hour occupied by reference or sale	2 00	0 50
24. Every additional mile above two for travelling expenses.	0 20	0 10

	HIGHER SCALE. HIGH COURT AND COURT OF APPEAL.	COUNTY COURTS.
FEES TO BE PAYABLE IN STAMPS. ETC.— <i>Con.</i>	\$ c.	\$ c.
25. Every order in Chambers.....	0 50	0 20
26. Searching files in office.....	.....	0 10
27. Do. on Higher Scale same allowance as to Deputy Registrar.		
CLERK OF THE PROCESS, CLERK OF THE CROWN AND PLEAS, REGISTRARS, LOCAL REGISTRARS, DEPUTY REGISTRARS, DEPUTY CLERKS OF THE CROWN, CLERK IN CHAMBERS, ACCOUNTANT AND TAXING OFFICERS IN THE HIGH COURT, AND THE CLERKS OF THE COUNTY COURTS.		
28. Every writ.	0 50	0 50
29. Every Concurrent, Alias, Pluries or Renewed Writ.	0 50	0 40
Additional on every Writ by Statute (b).....	0 50	.....
30. Every appearance entered, and filing memorandum thereof.	0 20	0 15
31. Every appearance, each defendant after the first	0 10	0 10
32. Filing every Affidavit, Writ or other proceeding..	0 10	0 10
33. Amending every Writ or other proceeding.....	0 30	0 25
34. Upon payment of money into Court where the amount is upwards of \$10.....	0 30	0 30
[No sum to be payable in respect of payments into Court upon mortgages or securities held by the Accountant: Rule 1271, 18 Feb., 1892.		
35. Upon payment of money out of Court where the amount is upwards of \$10: Rule 1271, 18 Feb., 1892.	0 30	0 30
36. Passing and certifying Record (payable in cash to Deputy Clerks of the Crown, Local Registrars and Deputy Registrars not paid by salary) (e)	1 00	0 50

(b) Imposed by 58 V. c. 12, s. 183 (Jud. Act, s. 183), and payable in stamps.

(e) This fee is no longer payable in cash to any officer, except a Deputy Registrar who is not paid by salary. It is payable in stamps to other officers. See note (e) on p. 28.

	HIGHER SCALE. HIGH COURT AND COURT OF APPEAL.	COUNTY COURTS.
	\$ c.	\$ c.
FEES TO BE PAYABLE IN STAMPS, ETC.— <i>Con.</i>		
37. Entering action for trial or assessment (including H. C. cases entered for trial at C. C.) (e)	(f) 2 00	0 50
(The foregoing fee of \$2 payable by Statute (f) to be payable in cash to Deputy Clerks of the Crown, Local Registrars and Deputy Regis- trars not paid by salary.)		
Additional fee in High Court cases payable by Statute for the Shorthand Reporters' Fund payable in stamps (c).....	(c) 1 00	.....
Additional fee by Statute in jury cases (d).....	3 00	1 50
38. On setting down on the paper for argument every special case.	0 20	0 20
Additional fee payable by Statute (b).....	0 30	.....
39. Setting down a cause for any other purpose.....	0 50	0 20
40. Subpœna, including filing præcipe.....	0 50	0 20
Additional fee by Statute (b).....	0 50	.....
41. Every Reference, Inquiry, Examination, or other special matter for every meeting not exceed- ing one hour, not including the settlement of minutes of a judgment nor the allowance or disallowance of a bond.....	1 00	0 75
* As to minutes of judgment, this expresses a ruling of Boyd, C., 29th September, 1888, and as to settling a bond for security for costs, the decision in <i>Casey v.</i> <i>Morden</i> , 16 P. R. 127.		

(b) Imposed by 58 V. c. 12, s. 183 (Jud. Act. s. 183), and payable in stamps.

(c) The amount payable was formerly \$1, but is now \$2; see 5 Ed. vii. c. 13, s. 5 (see Jud. Act, s. 171), which took effect on 1st Sept., 1905.

(d) Imposed by R. S. O. 1887, c. 52, s. 148 (R. S. O. 1897, c. 61, s. 150).

(e) A fee of \$3 was formerly payable to Deputy Clerks of the Crown for their own use, under 44 V. c. 8, s. 1, in lieu of the \$2, mentioned in this item, and the \$1 mentioned in item 36: the latter fee is now payable in stamps (or in cash to Dep. Registrars not paid by salary), and the fee of \$2, which was imposed by Jud. Act, s. 183, is not now payable: see 3 Ed. vii. c. 8, s. 9, amending s. 183.

(f) This fee on the H. C. scale is no longer payable. See note (e).

	HIGHER SCALE. HIGH COURT AND COURT OF APPEAL.	COUNTY COURTS.
	\$ c.	\$ c.
FEES TO BE PAYABLE IN STAMPS, ETC.— <i>Con.</i>		
42. Every Reference, Inquiry, Examination, or other special matter, for every additional hour or less.	1 00	0 50
43. Fee on report made on such reference, etc.	1 00	1 00
44. Attending on opening Commission.	1 00	0 50
45. Every certificate made evidence by Law, or required by the practice, including any necessary search.	0 50	0 50
Additional fee where seal is required (<i>b</i>).	0 50	.....
46. Every Certificate for Registration.	0 50	0 20
Additional fee for Seal of Court or office (<i>b</i>).	0 50	.....
47. Entering Certificate of Title or Conveyance, per folio.	0 10	0 10
48. Every ordinary Order.	0 30	0 30
Additional fee by Statute (<i>b</i>).	0 20	.....
49. Every special Order, not exceeding six folios, per folio.	0 20	0 20
Additional fee by Statute (<i>b</i>).	0 20	.....
50. Every Chamber Order.	0 50	0 50
51. Every interlocutory Judgment or Judgment by default.	0 50	0 30
Additional fee by Statute (<i>b</i>).	0 60	.....
52. Every final Judgment otherwise than Judgment by default.	0 50	0 50
Additional fee by Statute (<i>b</i>).	0 60	.....
53. Taxing Bill of Costs and giving allocatur or certificate.	0 70	0 80
Additional fee by Statute (<i>b</i>).	0 20	.....
54. Entering Order when necessary, per folio.	0 10	0 10
55. Taking account on Præcipe Judgment.	1 00	0 50

(*b*) Imposed by 58 V. c. 12, s. 183 (Jud. Act, s. 183), and payable in stamps.

	HIGHER SCALE. HIGH COURT AND COURT OF APPEAL.	COUNTY COURTS.
FEEES TO BE PAYABLE IN STAMPS, ETC.— <i>Con.</i>	\$ c.	\$ c.
Where the defendant disputes the amount only of the plaintiff's claim and an account is taken by the judgment, the officer signing judgment is entitled for taking the account to no greater fee than the amount specified in this item: <i>Gilpin v. Cole</i> , 17 C. L. T. 380.		
56. Exemplification, or office or other copy of papers or proceedings required to be given out, per folio, besides certificate and seal when required.	0 10	0 10
Additional fee by Statute for Seal of Court (b)...	0 50	.....
57. Examining and authenticating papers when copy prepared by Solicitor—every three folios....	0 05	0 05
58. Every search, if within one year.....	0 10	0 10
59. Every search, if over one year and within two years	0 20	0 10
60. Every search, if over two years, or a general search	0 50	0 20
61. Every Affidavit, Affirmation, etc., taken before them.	0 20	0 20
62. Every Allowance and Justification of Bail.	0 30	.....
63. Taking Recognizance of Bail.	0 30	.....
64. Entering Satisfaction on Record, and filing Satisfaction piece, including any necessary search.	0 50	0 30
65. Every Commission for the Examination of Witnesses.	1 00	0 50
66. Making up and forwarding papers, including bills of costs.	0 50	0 10
67. Every Commission for taking Bail and Affidavit (to be on parchment).....	2 00	.. .. .
68. Entering Exoneretur on Bail piece.....	0 30	0 20
69. Making up Records of Conviction, or of Acquittal, per folio.	0 10	.....
70. Entering and Docketing Judgment.....	0 50	.....
71. For making the Entry required in Cognovit Book.	0 50	0 50

(b) Imposed by 58 V. c. 12, s. 183 (Jud. Act, s. 183), and payable in stamps.

	HIGHER SCALE. HIGH COURT AND COURT OF APPEAL.	COUNTY COURTS.
	\$ c.	\$ c.
FEES TO BE PAYABLE IN STAMPS, ETC.— <i>Con.</i>		
CLERKS OF THE COUNTY COURTS (<i>Additional</i>).		
72. Every Judgment pronounced, Jury discharged, Record withdrawn, or Order of Reference at the trial.		0 50
73. Drawing appointments made by the Judge.		0 25
74. Every appointment for taxation of costs or otherwise, made by C. C. Clerk.		0 10
75. For every Jury sworn.		1 00
76. Every enlargement on application to the Judge in Chambers, including search, if marked by the Clerk.		0 15
DEPUTY REGISTRARS NOT PAID BY SALARY.		
<i>(Additional, only so long as the present officers retain office and are not paid by salary.)</i>		
77. Marking every exhibit produced on the examination of witnesses.	0 20	.....
78. Swearing each witness.	0 20	.....
79. Attending on inspection of documents, produced with affidavits on production, per hour.	1 00	.....
SPECIAL EXAMINER.		
80. Every appointment.	0 50	0 10
81. Administering oath or taking affirmation.	0 20	0 20
82. Marking every exhibit.	(a) 0 20	(b) 0 20
83. Taking depositions per hour.	(c) 0 50	0 75

(a) Now 10 cents: see Order in Council, Jud. Act, s. 175, H. & L. Jud. Act (3rd ed.) p. 189.

(b) Now 5 cents: see *ib.*

(c) Now \$1.00: see *ib.*

	HIGHER SCALE. HIGH COURT AND COURT OF APPEAL.	COUNTY COURTS.
	\$ c.	\$ c.
FEES TO BE PAYABLE IN STAMPS, ETC.— <i>Con.</i>		
84. Fair copy for Solicitor, per folio (when required)	(d) 0 10	0 10
85. Every attendance out of office when within two miles.	(e) 2 00	0 50
86. Every attendance over two miles out of office—extra per mile.	0 20	0 10
87. Every certificate.	0 50	0 25
88. Making up and forwarding answers, depositions, etc., including filing <i>Præcipe</i>	0 50	0 25
89. For every attendance upon an appointment, when Solicitor or witnesses do not attend and examiner not previously notified.	1 00	0 50
REFEREE OF TITLES.		
90. Every Warrant or Appointment in contested cases	0 30	.....
91. Administering Oath or taking Affirmation.	0 20	.....
92. Marking every exhibit.	0 10	.....
93. Drawing depositions, reports or orders, advertisements and notices, per folio.	0 20	.....
94. Copy of papers given out when required, per folio	0 10	.....
95. Every attendance upon a reference in a contested case.	1 00	.....
96. For each additional hour after the first.	1 00	.....
97. Every certificate not being the certificate of title	0 50	.....
98. Filing each paper.	0 10	.....
99. Taxing costs, including attendance.	1 00	.....
100. Making up and forwarding papers to the Inspector of Titles.	0 30	.....
101. Every special attendance out of office within two miles.	1 00	.....
102. Every additional mile above two.	0 20	.....

(d) See now Order in Council, Jud. Act, s. 175, H. & L. Jud. Act (3rd ed.) p. 189.

(e) Now \$150: see *ib.*

	HIGHER SCALE. HIGH COURT AND COURT OF APPEAL.	COUNTY COURTS.
	\$ c.	\$ c.
FEES TO BE PAYABLE IN STAMPS, ETC.— <i>Con.</i>		
103. Reading affidavit, per folio.....	0 02	.....
104. Matter added, per folio.....	0 20	.....
105. Searching files in office.....	0 20	.....
106. Every deed in the chain of title other than satisfied mortgages.	0 50	.....
107. Where title is claimed by possession only.....	4 00	.....
108. Drawing and engrossing certificate of title, or conveyance in duplicate.....	4 00	.....
109. All necessary sums paid for postage or transmission of papers.....		.....
See also <i>Rule 1011.</i>		

INSPECTOR OF TITLES.

110. On entering petition, for all correspondence, examination of the title, drawing and engrossing certificate or conveyance and every other matter or thing done under the petition (Con. Rule 1036).....	8 00
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REAL REPRESENTATIVE.

111. The Real Representative acting under the Act respecting the partition and sale of Real Estate (R. S. O. 1887, c. 104) (a) shall, in the case of proceedings being instituted in the High Court or a County Court, be entitled to demand and receive for all services performed by him under the said Act, the same fees as nearly as may be as are allowed to Local Masters or Special Examiners for similar services.
- (a) Now R. S. O. c. 123.

	HIGHER SCALE. HIGH COURT AND COURT OF APPEAL.	COUNTY COURTS.
FEEES TO BE PAYABLE IN STAMPS, ETC.— <i>Con.</i>	\$ c.	\$ c.
CRIER.		
112. Calling every case, with or without jury.....	0 60	0 50
113. Swearing each witness, or constable.....	0 15	0 15
COMMISSIONERS.		
114. For taking every affidavit.....	0 20	0 20
115. For taking every recognizance of bail.....	0 50	0 50
116. For marking every exhibit.....	0 10	0 10
ALLOWANCE TO WITNESSES.		
<p>A plaintiff is not bound to rely on the admissions of the defendants in the examination for discovery, and the costs of witnesses called to prove facts thus admitted are taxable: <i>Alexander v. School Trustees</i>, 11 P. R. 157. The costs of witnesses called to prove irrelevant matters should not be allowed: <i>Christopher v. Noxon</i>, 10 P. R. 149. When the witness is subpoenaed and not called the Taxing Officer may inquire into the practicability and necessity of subpoenaing him: <i>McLean v. Evans</i>, 3 P. R. 154; and see <i>Re Prescott Election</i>, 32 U. C. Q. B. 303. The extra costs of witnesses occasioned by trying the action out of the country, where the witnesses reside, may be disallowed by a Judge to a successful party: see <i>Ledyard v. McLean</i>, 18 Gr. 139, where such costs were disallowed to a successful defendant.</p> <p>The Master may examine into the truth of an affidavit of disbursements for witness fees, or counsel's receipt for fees: <i>Doe dem. Boulton v. Switzer</i>, 1 C. L. Ch. 83; <i>Ham v. Lasher</i>, 24 U. C. Q. B. 359. See also notes, H. & L. Jud. Act (3rd ed.) p. 1389.</p> <p>Where witnesses are not called, the onus is on the party subpoenaing them to shew their relevancy, and sufficient reason for their not having been called: <i>Carlisle v. Roblin</i>, 16 P. R. 328; and see <i>East Stonehouse, L. B. v. Victoria Brewery, etc.</i> 43 W. R. 585; 73 L. T. 54.</p>		
117. To witnesses residing within three miles of the Court House, per diem.....	1 00	1 00

	HIGHER SCALE. HIGH COURT AND COURT OF APPEAL.	COUNTY COURTS.
	\$ c.	\$ c.
FEES TO BE PAYABLE IN STAMPS, ETC.— <i>Con.</i>		
118. To witnesses residing over three miles from the Court House.	1 25	1 25
119. Barristers and solicitors, physicians and surgeons, other than parties to the cause, when called upon to give evidence, in consequence of any professional service rendered by them, or to give professional opinions, per diem.	4 00	4 00
120. Engineers, surveyors and architects, other than parties to the cause, when called upon to give evidence of any professional service rendered by them, or to give evidence depending upon their skill or judgment, per diem.	4 00	4 00
<p>An auctioneer was held entitled to fees as a professional witness in <i>Re Workingmen's Mutual Soc.</i>, 21 Ch. D. 831. and it was there held also that the witness though sworn might refuse to answer until paid the fee to which he was entitled. In Ontario an auctioneer would not appear to be so entitled.</p> <p>An officer of the Court subpoenaed to produce public documents in his custody was held to be entitled to professional witness fees of \$4 a day: <i>Re Nelson</i>, 2 Chy. Ch. 252; but this is not now proper under the present tariff, and <i>Rule 1151</i>, unless the Court Judge, or officer before whom the witness produces the documents, otherwise orders.</p>		
121. If witnesses attend in one case only, they will be entitled to the full allowance. If they attend in more than one case, they will be entitled to a proportionate part in each case only.		
122. The travelling expenses of witnesses, over three miles, shall be allowed, according to the sums reasonably and actually paid, but in no case shall exceed twenty cents per mile, one way.		
<p>See <i>Picasso v. Trustees of Maryport Harbour</i>, W. N. 1884, 85; 28 Sol. Jour. 391, where costs of keeping a witness until the trial were allowed under special circumstances. The Ontario Rules and Tariff do not expressly authorize such an allowance.</p> <p>See also <i>The City of Lucknow</i>, 51 L. T. 907.</p>		

	HIGHER SCALE. HIGH COURT AND COURT OF APPEAL.	COUNTY COURTS.
FEES TO BE PAYABLE IN STAMPS. Etc.— <i>Con.</i>	s. c.	s. c.
<p>The expenses of witnesses subpoenaed, but not called, may be allowed in the discretion of the Taxing Officer, but were disallowed where the evidence expected from the witnesses was apparently of no value, and they were subpoenaed from abundance of caution: <i>Beddington v. Deichmann</i>, 80 L. T. Jour. 226; <i>Leeds Forge v. Deighton's Patent, etc.</i> 1903, 1 Ch. 475.</p> <p>Where an examination of a witness is taken <i>de bene esse</i>, but he is afterwards present at the trial and his depositions are not read, the costs of his examination may be allowed if having regard to the state of affairs at the time they were reasonably and properly incurred: <i>Bartlett v. Higgins</i>, 49 W. R. 449.</p> <p>Amongst the costs of the day given to a defendant on an adjournment of the trial, his expenses were allowed where his counsel certified that he could not have proceeded without him: and it was held that it was premature to say at that stage of the cause that no material evidence could be given by defendant: <i>Goodfellow v. Shuttleworth</i>, 3 C. L. T. 105.</p> <p>The travelling expenses of a party who was a necessary and material witness in his own behalf, and came from England to give evidence at the trial, may be allowed: <i>For v. Toronto & Nipissing Ry. Co.</i> 7 P. R. 157, even though he is entitled to Division Court costs only in the action: <i>Talbot v. Poole</i>, 15 P. R. 274.</p> <p>The costs of executing a commission are entirely in the discretion of the Taxing Officer: <i>Ib.</i> See also <i>Colborne v. Thomas</i>, 4 Gr. 169.</p> <p>The amount to be allowed for procuring the attendance of witnesses who live out of the jurisdiction is in the discretion of the Taxing Officer, and is not limited to the amount here specified: <i>Ball v. Crompton Corset Co.</i> 11 P. R. 256; see also note to Rule 1181: and see <i>Commissioners of Railways v. O'Rourke</i>, 75 L. T. 84.</p> <p>In the case of divided success, as to the proportion of fees of witnesses taxable, see <i>Brown v. Houston</i>, 17 Times 683, following <i>Harrison v. Bush</i>, 5 E. & B. 344.</p> <p>An action lies at the suit of a witness against the party subpoenaing him for his witness fees, if not duly paid: <i>Chamberlain v. Stoucham</i> 24 Q. B. D. 113.</p>		
N.B.—In all applications and proceedings before the County Court Judges not relating to suits instituted in any Court of Civil Jurisdiction there shall be payable to the Clerks of the County Courts the same fees as in this Table so far as the same are applicable.		

TARIFF C.

FEES OF SHERIFFS AND CORONERS

IN CIVIL MATTERS.

(*Referred to in Rule 1189.*)

FEES PAYABLE TO SHERIFFS AND CORONERS.

General Matters.

The Act 62 V. (2), c. 7, s. 6, provides as follows:—6. Where a Sheriff is directed by the Judge to perform any service or do any act for which no fee is provided, the Sheriff may be allowed such fees as the Judge may think adequate and may direct, and the same shall be payable by the Province or by the County or part by the Province and part by the County, as the Judge may direct.

1. Receiving, filing, entering, and indorsing all Writs, Pleadings, Rules, Notices, or other papers, each.

0 25 0 10

The ordinary charges of a Sheriff on a writ besides his poundage and expenses, are:

	H.C.	C.C.
Receiving. . . . .	.25	.10
Warrant. . . . .	.75	.50
Return. . . . .	.50	.25
	1.50	.75

HIGHER
SCALE.
HIGH
COURT
AND
COURT OF
APPEAL

COUNTY
COURTS.

\$ c.

\$ c.

TARIFF OF FEES OF SHERIFFS, ETC.

	HIGH SCALE. HIGH COURT AND COURT OF APPEAL.	COUNTY COURTS.
FEES OF SHERIFFS AND CORONERS— <i>Con</i>	\$ c.	\$ c.
<p>62 V. (2), c. 7, s. 2, provides as to these charges as follows:—</p> <p>2. The Sheriff may at the time of the delivery demand from any person delivering a writ of execution to him to be executed, the fees allowed to them by the Tariff then in force for receiving, warrant, and return, and the fees so paid shall if afterwards collected from the debtor be repaid by the Sheriff to the person who issued the writ.</p>		
2. Return of all Process and Writs, except Subpoenas.	0 50	0 25
3. Return of Pleadings, Rules, Notices, or other papers.	0 25	0 15
4. Every search, not being by a party to a cause or his Solicitor.	0 30	0 30
5. Certificate of result of such search, when required (a search for a Writ against lands of a party shall include sales under Writ against same party, and for the then last six months)	0 75	0 75
6. Where a certificate respecting executions against lands is required, the Sheriff, if so requested, is to include in one certificate any number of names in respect of which the certificate may be required in the same matter or investigation, but shall be entitled to the same fees as if one certificate were given for each name, provided that no greater sum than \$4 shall be charged or collected in respect of such certificate. (50 V. c. 7, s. 5.)		
7. Every Warrant to execute any Process, <i>mesne</i> or final, directed to the Sheriff, when given to a Bailiff.	0 75	0 50
8. Every Jury sworn, or Cause tried before a judge.	1 00	0 80
9. Every Letter written (including copy) required by party or his Solicitor respecting Writs or Process, when postage prepaid.	0 50	0 30

	HIGHER SCALE. HIGH COURT AND COURT OF APPEAL.	COUNTY COURTS.
	\$ c.	\$ c.
FEES OF SHERIFFS AND CORONERS—<i>Con.</i>		
10. Drawing every Affidavit when necessary and prepared by Sheriff.....	0 25	0 25
<i>Service of Process and Papers.</i>		
11. Service of non-bailable Process, each defendant (no fee for Affidavit of Service in such cases to be allowed, unless service made or recognized, by Sheriff; on County Court scale, including affidavit of service).....	1 50	1 00
12. Serving Subpœnas, Orders, Notices, or other papers (besides mileage) (a).....	0 75	0 50
13. For each additional party served.....	0 50	0 25
14. Actual and necessary mileage from the Court House to the place where service of any Process, paper or proceeding is made, per mile..	0 13	0 13
<i>Arrest and Attachment.</i>		
15. Arrest, when amount does not exceed \$200.....	2 00	2 00
Arrest, when amount does not exceed \$400.....	4 00	4 00
Arrest, when amount over.....\$400.....	6 00	.....
16. Bail Bond or Bond to the limits.....	2 00	1 00
17. Assigning of the same.....	1 00	0 25
18. Mileage going to arrest when made, per mile.....	0 13	0 13
Mileage conveying party arrested from place of arrest to the gaol, per mile.....	0 13	0 13
19. Bringing up prisoner on attachment or <i>Habeas Corpus</i> , besides travel at 20c. per mile.....	1 50	1 00
20. Certificate of surrender by sureties under Rule 1049	1 00	1 00

(a) As to the allowance of mileage, see *Rule 1172*.

	HIGHER SCALE. HIGH COURT AND COURT OF APPEAL.	COUNTY COURTS.
	\$ c.	\$ c.
FEES OF SHERIFFS AND CORONERS— <i>Con.</i>		
<i>Absconding Debtors.</i>		
21. Seizing estate and effects on attachment against an absconding debtor.	3 00	1 50
22. Valuators, each.	1 00	1 00
23. Removing or retaining property, reasonable and necessary disbursements and allowances to be made by the Taxing Officer, or in the C. C. by order of the Court or a Judge.		
24. Drawing Bond to secure goods taken under an attachment against an absconding debtor, if prepared by Sheriff.	1 50	1 50
<i>Replevin.</i>		
25. Precept or Warrant to Bailiff in Replevin.	0 75	0 40
26. Drawing Notice for Service on Defendant in Replevin.	0 75	0 40
27. Delivering goods to the party obtaining the Order of Replevin.	3 00	1 50
28. For Writ <i>De Retorno Habendo</i>	1 00	0 50
29. On Replevin Bond.	4 00	2 00
30. Assignment.	1 00	0 25
31. All necessary disbursements for the possession, care and removal of property taken in Replevin.		
<i>Juries.</i>		
32. Notice of appointment for ballot of Jury.	0 50	0 25
33. Notice to Clerk of Peace of such appointment.	0 50	0 25
34. Fee on balloting Special Jury.	5 00	2 50
35. Fee on striking Special Jury.	2 50	1 25
36. Serving each Special Juror (besides mileage at 13c. per mile).	0 50	0 25

	HIGH SCALE. HIGH COURT AND COURT OF APPEAL.	COUNTY COURTS.
	\$ c.	\$ c.
FEES OF SHERIFFS AND CORONERS— <i>Con.</i>		
37. Returning Panel of Special Jurors.....	1 00	0 50
38. Keeping and checking pay list of Special Jurors' attendance, in each case.....	1 00	1 00
<i>Sales, Poundage, Etc.</i>		
39. Poundage on Executions, and on attachments in the nature of Executions, where the sum made does not exceed \$1,000 (in the C. C. on the sum made).....	6 per ct.	5 per ct.
40. Where the sum is over \$1,000 and under \$4,000, upon the excess over \$1,000 (in addition to the poundage allowed up to \$1,000).....	3 per ct.	.....
41. Where the sum is \$4,000 and over, upon the excess over \$4,000 (in addition to the poundage allowed up to \$4,000).....	1½ per ct.	.....
(Exclusive of mileage for going to seize and sell, and of all disbursements necessarily incurred in the care and removal of property).....		
See notes to Rules 871, 1190,		
As to the words in brackets, see <i>Morrison v. Taylor</i> , 9 P. R. 394; they include the Sheriff's possession money, in regard to which the amount to which the Sheriff is entitled is \$1.25 for a day of 24 hours; <i>Hay v. Drake</i> , 8 P. R. 120. In <i>re Black Eagle Gold Mining Co.</i> 6 O. L. R. 512, \$2.25 per day was allowed.		
Possession money is intended only to cover the Sheriff's expenses out of pocket. Where a man has been put in possession under a writ for one creditor and he is retained in possession, after other writs come in, for all creditors, the Sheriff, on the withdrawal of the writ, cannot recover the possession money from more than one creditor: <i>Glasbrook v. David</i> . 1905. 1 K. B. 615.		
Mileage is only chargeable on going to seize and sell, not on returning, nor for putting up notices of sale and postponements: <i>Hay v. Drake</i> , 8 P. R. 120.		

	HIGHER SCALE. HIGH COURT AND COURT OF APPEAL.	COUNTY COURTS.
	\$ c.	\$ c.
FEES OF SHERIFFS AND CORONERS—<i>Con.</i>		
Where a Sheriff makes a seizure in one place, and subsequently has another <i>fi. fa.</i> delivered to him, he is not entitled to charge a fee or mileage for a second seizure unless he in fact makes a fresh seizure in a different place, or probably of further goods at the same place where the first seizure was only of sufficient to satisfy the writs at the time in his hands: see <i>Re Wells</i> , 68 L. T. 231.		
See further as to where the Sheriff is entitled to poundage. II. & L. Jud. Act (3rd ed.) pp. 1420-1422.		
42. Schedule taken on Execution, attachment or other process, including copy to Defendant, not exceeding 5 folios.....	1 00	0 50
43. Each folio above 5.....	0 10	0 10
44. Drawing advertisements when required by law to be published in the official <i>Gazette</i> or other newspaper, or to be posted up in a Court House or other place, and transmitting same, in each suit.....	1 50	0 75
45. Every necessary notice of Sale of Goods (not more than 3), in each suit.....	0 75	0 40
46. Every notice of Postponement of Sale, in each suit	0 25	0 20
47. The sum actually disbursed for Advertisements required by law to be inserted in the official <i>Gazette</i> or other newspaper.		
<i>Sequestration.</i>		
48. Upon seizure of estate and effects under writ of sequestration.	4 00	1 00
49. Schedule of goods taken in execution (including copy for defendant) if not exceeding five folios.	1 00	0 50
50. Each folio above five.....	0 10	0 10
51. Removing or retaining property, reasonable and necessary disbursements and allowances to be made by the Taxing Officer, or by order of the Court or Judge.		

	HIGHER SCALE. HIGH COURT AND COURT OF APPEAL.	COUNTY COURTS.
	\$ c.	\$ c.
FEES OF SHERIFFS AND CORONERS.—<i>Con.</i>		
52. (Poundage upon sequestration followed by sale and collection—as on other executions).		
<i>Writ of Possession.</i>		
53. Executing Writ of Possession and serving and executing Writ of Restitution, besides mileage...	6 00	2 00
<i>Hab. Fac. Seisin.</i>		
54. Viewing Lands, and instructing Surveyors under Hab. Fac. Seisin, exclusive of mileage, per day.	5 00	
55. Giving Possession, exclusive of mileage and assistance.	5 00	
56. All necessary disbursements to Surveyors and others for surveying the lands and giving possession, to be allowed to the Sheriff.		
<i>On a View by a Jury.</i>		
57. For travelling expenses to the Sheriff, Shewers and Jurymen—Expenses actually paid, if reasonable.		
58. Fee to the Sheriff, when the distance does not exceed five miles, from his office.	2 00	
59. When such distance exceeds five miles.	3 00	
60. In case he is necessarily absent more than one day—then for each day after the first, a further fee of.	3 00	
61. Fee to each of Shewers—the same as to the Sheriff, calculating, etc.		
62. Fee to each common juryman, per diem.	1 00	
63. Fee to each special juryman, per diem.	2 00	

	HIGHER SCALE. HIGH COURT AND COURT OF APPEAL.	COUNTY COURTS.
	\$ c.	\$ c.
FEES OF SHERIFFS AND CORONERS.—<i>Con.</i>		
64. Allowance for refreshment to the Sheriff, Shewers and Jurymen, common or special, each, per diem.	1 00	
65. To the Sheriff for summoning each jurymen, whose residence is not more than five miles distant from the Sheriff's office.	0 40	
66. And for each whose residence exceeds five miles from Sheriff's office.	0 60	
<i>Writ of Inquiry, Escheat, Etc.</i>		
67. Presiding or attendance on execution of Writ of Inquiry, or under any Writ of Escheat, or other Writ of a like nature.	5 00	4 00
68. Summoning each Juror in such case.	0 50	0 50
69. Bailiff's Fees summoning Jury, mileage per mile.	0 13	0 13
70. Hire of Room, if actually paid, not to exceed \$2 per day.		
71. Mileage from the Court House to the place where Writ executed, per mile	0 13	0 13
CORONERS.		
72. The same fees shall be taxed and allowed to Coroners for services rendered by them in the service, execution and return of process, as allowed to Sheriffs for the same services above specified.		

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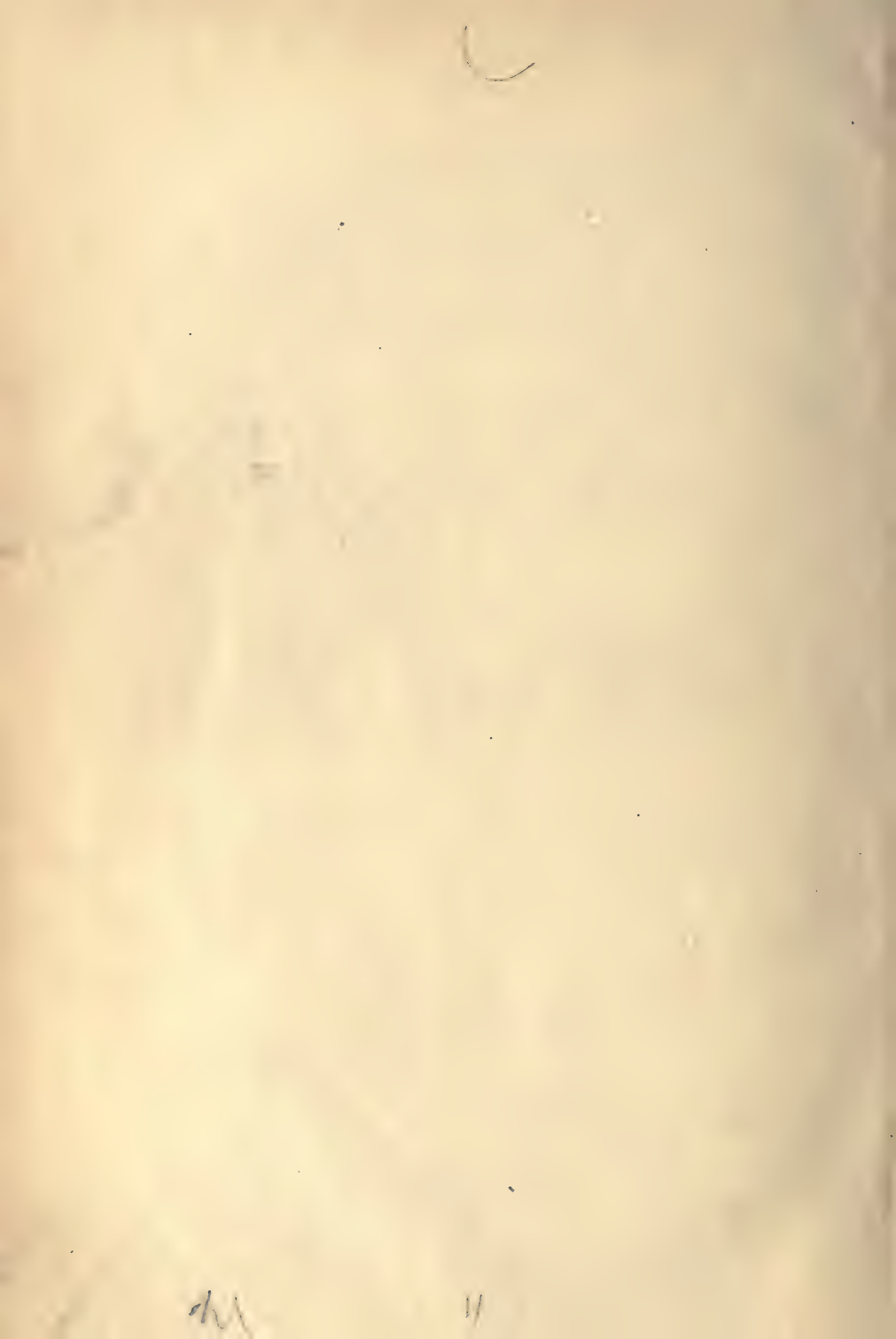
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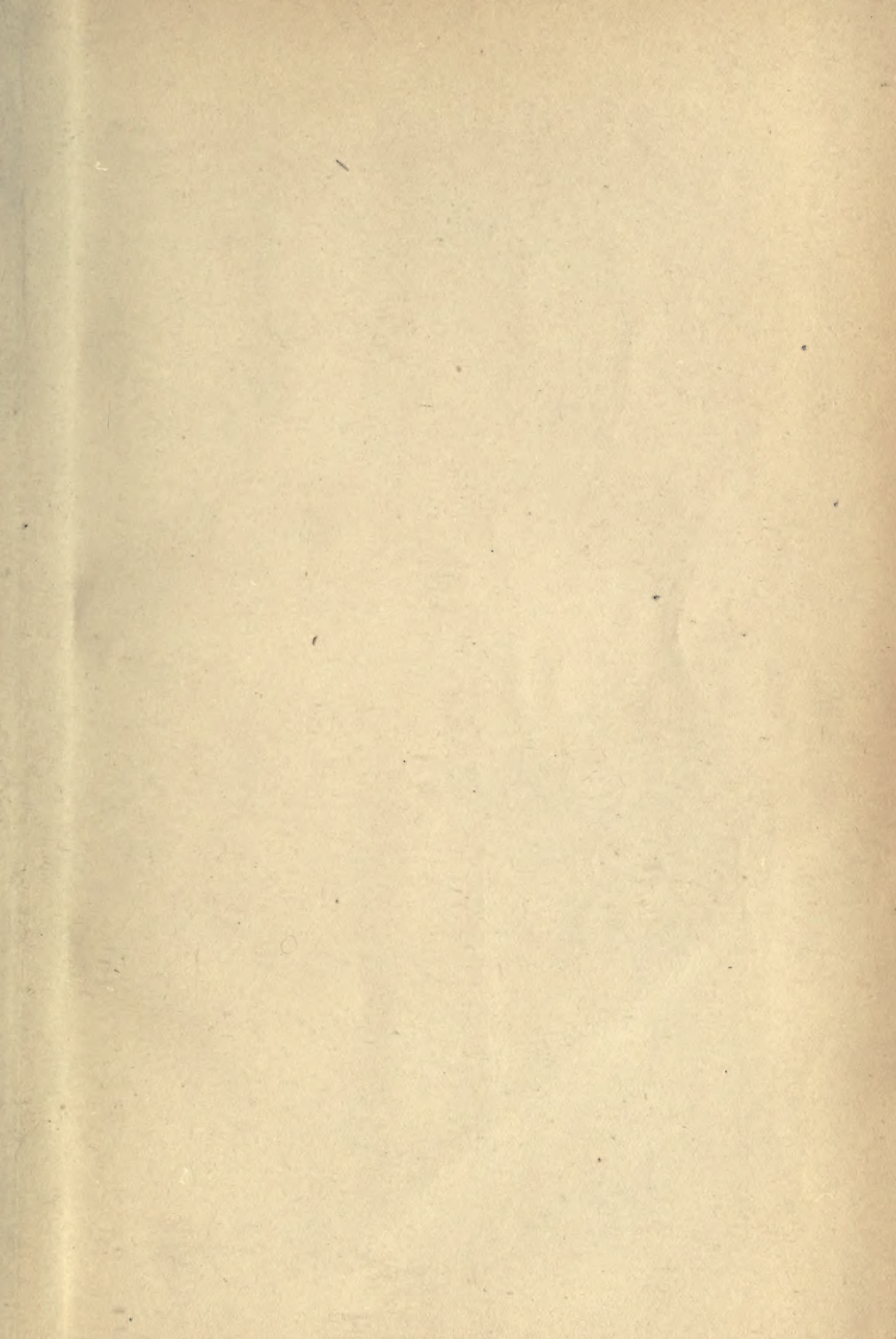
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